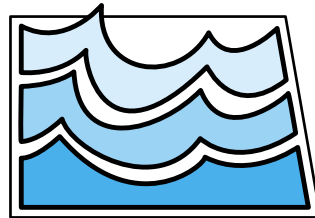

NORTH DAKOTA
WATER
LAWS

2007

Compiled by



North Dakota
State Water Commission

NORTH DAKOTA WATER LAWS

2007

Compiled by

North Dakota
State Water Commission

Governor John Hoeven
Roger Johnson, Commissioner of Agriculture
Arne Berg, Devils Lake
Larry Hanson, Williston
Elmer Hillesland, Grand Forks
Maurice Foley, Minot
Jack Olin, Dickinson
Harley Swenson, Bismarck
Robert Thompson, Page

Dale L. Frink, P.E., State Engineer and Secretary

*This material may **deviate** from the final official version of the North Dakota Century Code.
This material does not contain the source notes or annotations following the sections in the North Dakota
Century Code. The annotations may contain temporary provisions and effective dates. Each user of this mate-
rial must check the published version of the North Dakota Century Code to determine the official
version of the law and whether a relevant law may be in effect at any particular time.*

Table of Contents

	<u>Page</u>
North Dakota Constitution:	
Article X, Section 22	ND Constitution
Article XI, Section 3	ND Constitution
 Title 1 - General Provisions	
1-06 Validation of Official Acts	1-06
 Title 4 - Agriculture	
4-35.1 Chemigation Regulation	4-35.1
 Title 6 - Banks and Banking	
6-09.4 Public Finance Authority	6-09.4
6-09.5 Community Water Facility Loans	6-09.5
 Title 23 - Health and Safety	
23-29 Solid Waste Management and Land Protection Act	23-29
23-33 Ground Water Protection	23-33
 Title 24 - Highways, Bridges, and Ferries	
24-03 Construction and Maintenance of State Highway System	24-03
24-06 Local Road Improvements	24-06
 Title 28 - Judicial Procedure, Civil	
28-34 Local Governing Body Decision Appeal	28-34
 Title 37 - Military	
37-17.1 Emergency Services	37-17.1
 Title 38 - Mining and Gas and Oil Production	
38-11.1 Oil and Gas Production Damage Compensation	38-11.1
38-14.1 Surface Mining and Reclamation Operations	38-14.1
 Title 43 - Occupations and Professions	
43-07 Contractors	43-07
43-35 State Board of Water Well Contractors	43-35
 Title 44 - Offices and Officers	
44-08 Miscellaneous Provisions	44-08
 Title 47 - Property	
47-01 General Provisions	47-01
47-05 Servitudes	47-05
47-06 Real Estate Title by Occupancy and Accession	47-06

Title 48 - Public Buildings		
48-01.1	Public Improvement Contract Bids [Repealed by S L 2007, ch 403, § 28]	
48-01.2	Public Improvement Bids and Contracts	48-01.2
48-02	Construction [Repealed by S L 2007, ch. 403, § 28]	
Title 54 - State Government		
54-27	Fiscal Administration.....	54-27
54-35	Legislative Council.....	54-35
54-44	Office of Management and Budget.....	54-44
54-44.7	Architect, Engineer, and Land Surveying Services.....	54-44.7
54-57	Office of Administrative Hearings.....	54-57
Title 57 - Taxation		
57-02	General Property Assessment.....	57-02
57-15	Tax Levies and Limitation.....	57-15
57-28	Rights of County When Lands Not Redeemed.....	57-28
57-51.1	Oil Extraction Tax.....	57-51.1
Title 61 - Waters		
61-01	General Provisions.....	61-01
61-02	Water Commission.....	61-02
61-02.1	Flood Control or Reduction Projects.....	61-02.1
61-03	State Engineer.....	61-03
61-04	Appropriation of Water.....	61-04
61-04.1	Weather Modification.....	61-04.1
61-05	Organization of Irrigation Districts.....	61-05
61-06	Government of Irrigation Districts.....	61-06
61-07	Powers of Irrigation Districts.....	61-07
61-08	Fiscal Affairs of Irrigation Districts.....	61-08
61-09	Assessments in Irrigation Districts.....	61-09
61-10	Changing Boundaries of Irrigation Districts.....	61-10
61-11	Dissolution of Irrigation Districts.....	61-11
61-12	Flood Irrigation Projects.....	61-12
61-13	Organization of Corporations for Irrigation Purposes.....	61-13
61-14	General Rules Governing Irrigation.....	61-14
61-15	Water Conservation.....	61-15
61-16	Creation of Water Resource Districts - Boards.....	61-16
61-16.1	Operation of Water Resource Districts.....	61-16.1
61-16.2	Floodplain Management.....	61-16.2
61-17	Tri-State Water Compact [Repealed by S.L. 1971, ch. 590, § 1]	
61-18	Erection and Maintenance of Dams [Repealed by S.L. 1961, ch. 381, § 1]	
61-19	Revetment Works [Repealed by S.L. 1989, ch. 755, § 1]	

61-20	Artesian Wells	61-20
61-21	Drainage Projects	61-21
61-21.1	Water Project Development	61-21.1
61-22	Township Projects [Repealed by S L 1963, ch. 421, § 22]	
61-23	Yellowstone River Compact	61-23
61-24	Garrison Diversion Conservancy District	61-24
61-24.1	Garrison Diversion Mitigation and Enhancement Lands Com'n [Repealed by S L 1995, ch. 593, § 1]	
61-24.2	West River Water Supply District [Repealed by S L 1993, ch. 607, § 2]	
61-24.3	Southwest Pipeline Project	61-24.3
61-24.4	Southwest Pipeline Series Bonds [Repealed by S L 1999, ch. 50, § 79]	
61-24.5	Southwest Water Authority	61-24.5
61-24.6	Northwest Area Water Supply Project	61-24.6
61-24.7	Red River Valley Water Supply Project	61-24.7
61-25	Reclamation Districts [Repealed by S L 1963, ch. 421, § 22]	
61-26	City Joint Use of Drains	61-26
61-27	Boating Regulations [Repealed by S L 1973, ch. 202, § 22]	
61-28	Control, Prevention, and Abatement of Pollution of Surface Waters	61-28
61-28.1	Safe Drinking Water Act	61-28.1
61-28.2	Water Pollution Control Revolving Loan Fund	61-28.2
61-29	Little Missouri State Scenic River Act	61-29
61-30	Lake Protection and Rehabilitation	61-30
61-31	Waterbank Program	61-31
61-32	Wetlands	61-32
61-33	Sovereign Land Management	61-33
61-34	Livestock Water Assistance Program	61-34
61-35	Water Districts	61-35
61-36	Devils Lake Outlet Committee	61-36
61-37	Irrigation District Finance Program	61-37
61-38	Dredged and Fill Material Disposal	61-38
61-39	Lake Agassiz Water Authority	61-39

NORTH DAKOTA CONSTITUTION

ARTICLE X

Section 22. The legislative assembly may provide by law for a percentage of revenue from taxes imposed on the extraction or production of oil to be allocated and credited to a special trust fund, to be known as the resources trust fund. The principal and income of the resources trust fund may be expended only pursuant to legislative appropriation for:

1. Constructing water-related projects, including rural water systems; and
2. Funding of programs for energy conservation.

ARTICLE XI

Section 3. All flowing streams and natural watercourses shall forever remain the property of the state for mining, irrigating and manufacturing purposes.

CHAPTER 1-06

VALIDATION OF OFFICIAL ACTS

1-06-03. Validation of acts of state water commission. All acts and proceedings of the water commission done and performed by said commission under and pursuant to the provisions of chapter 61-02 are declared valid in all things.

**CHAPTER 4-35.1
CHEMIGATION REGULATION**

<u>Section</u>		<u>Page</u>
4-35.1-01	Definitions	4-35.1: 1
4-35.1-02	Statement of compliance.....	4-35.1: 1
4-35.1-03	Rules - Standards for application through irrigation system, installation, maintenance, and modifications	4-35.1: 1
4-35.1-04	Inspections	4-35.1: 1
4-35.1-05	Enforcement.....	4-35.1: 1
4-35.1-06	Penalties	4-35.1: 2

CHAPTER 4-35.1 CHEMIGATION REGULATION

4-35.1-01. Definitions. As used in this chapter:

1. "Chemigation" means any process by which chemicals, including pesticides and fertilizers, are applied to land or crops through an irrigation system.
2. "Commissioner" means the agriculture commissioner.
3. "Fertilizer" means any fertilizer as defined by section 19-20.1-02.
4. "Pesticide" means that term defined in section 4-35-05.
5. "State engineer" means the state engineer appointed by the state water commission under section 61-03-01.

4-35.1-02. Statement of compliance. For the purposes of this chapter, farm irrigation systems used for chemigation which are designed, constructed, and operated as specified in the administrative rules adopted under this chapter so as to minimize the possibility of ground or surface water contamination, are considered to be in compliance with this chapter.

4-35.1-03. Rules - Standards for application through irrigation system, installation, maintenance, and modifications. The agriculture commissioner shall adopt rules regulating chemigation through irrigation systems in this state to minimize the possibility of chemical, pesticide, fertilizer, or other contamination of irrigation water supply and other rules as necessary to implement this chapter. The commissioner may establish by rule standards for application of pesticides and fertilizers through irrigation systems; for installation and maintenance of all equipment and devices used for chemigation purposes; for modifications or changes in design, technology, or irrigation practices; or for other purposes relating to the use or placement of equipment or devices. The commissioner may adopt rules requiring periodic calibration and inspection of equipment and system operation during periods of chemigation.

4-35.1-04. Inspections. The state engineer shall cooperate with the commissioner in the inspection of any irrigation system using chemigation. The state engineer shall inform the commissioner of any violation of this chapter that is discovered in the course of the state engineer's regular inspections of irrigation systems using chemigation.

4-35.1-05. Enforcement.

1. The commissioner shall enforce this chapter and any rules adopted under this chapter.
2. The commissioner may seek an injunction in the district court in the county in which the violation occurs or may issue a cease and desist order to any person for any alleged violation of this chapter or any rules adopted under this chapter.
3. For the purpose of carrying out the provisions of this chapter, the commissioner and the state engineer may enter upon any public or private premises at reasonable times in order to:
 - a. Have access for the purpose of inspecting any equipment subject to this chapter and the premises on which the equipment is stored or used.
 - b. Inspect or sample lands actually, or reported to be, exposed to pesticides or fertilizers through chemigation.
 - c. Inspect storage or disposal areas.

- d. Inspect or investigate complaints of injury to humans or animals.
- e. Sample pesticides and fertilizers and pesticide or fertilizer mixes being applied or to be applied.
- f. Observe the use and application of a pesticide or fertilizer through chemigation.
- g. Have access for the purpose of inspecting a premise or other place where equipment or devices used for chemigation are held for distribution, sale, or for use.

4-35.1-06. Penalties.

- 1. Any person who violates the provisions of this chapter or any rules adopted under this chapter is guilty of a class A misdemeanor.
- 2. When construing and enforcing the provisions of this chapter or any rules adopted under this chapter, the act, omission, or failure of any officer, agent, or other person acting for or employed by any person must in every case be also deemed to be the act, omission, or failure of such person as well as that of the person employed.
- 3. Any person found to have violated the provisions of this chapter or rules adopted under this chapter is subject to a civil penalty not to exceed five thousand dollars for each violation. The civil penalty may be imposed by a court in a civil proceeding or by the commissioner through an administrative hearing under chapter 28-32.

CHAPTER 6-09.4

PUBLIC FINANCE AUTHORITY

6-09.4-22. Protection of service during term of loan.

1. The service provided or made available by a political subdivision through the construction or acquisition of an improvement, or the revenues therefrom, financed in whole or in part with a loan to the political subdivision from the public finance authority or any other state agency or enterprise, may not be curtailed or limited by inclusion of all or any part of the area served by the political subdivision within the boundaries of any other political subdivision, or by the granting of any private franchise for similar service within the area served by the political subdivision, during the term of the loan. The political subdivision providing the service may not be required to obtain or secure any franchise, license, or permit as a condition of continuing to serve the area if it is included within the boundaries of another political subdivision during the term of the loan.
2. Under the circumstances described in subsection 1, nothing prevents the two political subdivisions, with the public finance authority or other state agency or enterprise, from negotiating an agreement for the right or obligation to provide the service in question, provided that any agreement is invalid and unenforceable unless the public finance authority or other state agency or enterprise is a party to the agreement and unless the agreement contains adequate safeguards to ensure the security and timely payment of any outstanding bonds of the public finance authority issued to fund the loan.

CHAPTER 6-09.5 **COMMUNITY WATER FACILITY LOANS**

	<u>Page</u>
<u>Section</u>	
6-09.5-01 Community Water Facility Loan Act - Intent	6-09.5: 1
6-09.5-02 Community water facility - Definition	6-09.5: 1
6-09.5-03 Transfer of funds - Revolving fund	6-09.5: 1
6-09.5-04 Loan applications - Approval	6-09.5: 1
6-09.5-05 Fund supervision and administration	6-09.5: 1
6-09.5-05.1 Audit and costs of administration	6-09.5: 1
6-09.5-06 Fund purposes	6-09.5: 1
6-09.5-07 Loan terms	6-09.5: 2
6-09.5-08 Loan eligibility	6-09.5: 2
6-09.5-09 Project service area alternatives	6-09.5: 2
6-09.5-10 Rules and regulations	6-09.5: 2
6-09.5-11 Powers of Bank of North Dakota	6-09.5: 2

CHAPTER 6-09.5

COMMUNITY WATER FACILITY LOANS

6-09.5-01. Community Water Facility Loan Act - Intent. Moneys transferred under this chapter shall be used primarily for supplementary financing in conjunction with federal moneys available under the authority of 7 U.S.C. 1926 and 1927 [Pub. L. 87-128; 75 Stat. 308], as amended through December 31, 1996, and the rules and regulations promulgated thereunder for the construction, enlargement, extension, or other improvement of community water facilities. This chapter is intended to improve the health, general welfare, convenience, and prosperity of communities and rural inhabitants presently lacking adequate water supplies.

6-09.5-02. Community water facility - Definition. The term "community water facility" includes any or all projects for the development, storage, treatment, purification, and distribution of water. Such projects include, but are not limited to, those works necessary for locating, conserving, controlling, treating, and distributing water, including reservoirs, dams, canals, wells, pumps, treatment plants, mains, pipelines, and other associated features necessary to supply water.

6-09.5-03. Transfer of funds - Revolving fund. A community water facility loan fund with an authorized ceiling of ten million dollars is hereby established from the future undivided profits of the Bank of North Dakota. This is a revolving fund, and all moneys transferred into the fund, interest upon fund moneys, and collections of interest and principal on fund loans must be used for the purposes of this chapter.

6-09.5-04. Loan applications - Approval. Applications for revolving fund loans must be submitted to the Bank of North Dakota which shall investigate and consider approval of loan applications under such rules and regulations as it may establish. The Bank shall cooperate with the state office of the farmers home administration or its successor in considering applications to comply with the requirements of 7 U.S.C. 1926 and 1927 [Pub. L. 87-128; 75 Stat. 308], as amended through December 31, 1996, and the rules and regulations promulgated thereunder relating to community water facilities.

6-09.5-05. Fund supervision and administration. The revolving fund and loans made therefrom must be supervised and administered by the Bank of North Dakota which shall make loans from the revolving fund to the extent moneys are available. Payments of interest and principal upon loans must be made to the Bank and credited to the revolving fund. The Bank may deduct one-half of one percent of the outstanding loans annually as a service fee for administering the revolving fund.

6-09.5-05.1. Audit and costs of administration. The industrial commission is responsible for contracting with a certified public accounting firm to audit the revolving fund as necessary. The cost of the audit, and any other actual costs incurred by the Bank on behalf of the fund, must be paid for by the fund.

6-09.5-06. Fund purposes.

1. Revolving fund moneys may not be used whenever sufficient federal loan and grant moneys are available, except:
 - a. To make community water facility projects feasible in conjunction with federal moneys when the projected cost is above the maximum per user feasibility loan limit set by the farmers home administration or its successor.
 - b. To provide supplemental financing for community water facility projects in conjunction with federal moneys when more projects can be completed through combined financing.

2. Revolving fund moneys may also be used for the following purposes under such terms and conditions as the Bank of North Dakota may prescribe:
 - a. To provide loans for necessary services prior to farmers home administration approval of proposed community water facility projects. Cities eligible under this chapter and associations, corporations, or cooperatives organized for the purposes of this chapter under the laws of North Dakota are eligible for loans under this subdivision.
 - b. To provide loans to cover operating expenses of community water facility projects when the borrower is unable to pay such expenses.
3. The Bank of North Dakota may defer interest and principal payments on revolving fund loans for up to three years to provide time for a community water facility to become self-supporting.

6-09.5-07. Loan terms. Revolving fund loans approved by the Bank of North Dakota must in no event exceed fifty percent of the cost of a community water facility project. Such loans must bear interest at a rate of three percent per annum.

6-09.5-08. Loan eligibility. Applicants eligible for loans shall include cities eligible under 7 U.S.C. 1926 [Pub. L. 87-128; 75 Stat. 308], as amended through December 31, 1996, and associations, cooperatives, and corporations operated on a nonprofit basis which have the legal authority necessary for constructing, operating, and maintaining the proposed facility or service and for obtaining, giving security for, and repaying the loan in accordance with farmers home administration requirements. Applicant cities, associations, cooperatives, and corporations shall seek to include cities and rural areas, eligible under farmers home administration rules and regulations and located near a proposed service area, as part of a water facility project. Reasons for not including such cities and rural areas must be approved jointly by the Bank of North Dakota and the farmers home administration.

6-09.5-09. Project service area alternatives. Applicants for revolving fund loans shall consider available alternatives to select the most efficient and economically feasible methods of planning a community water facility project. In addition to central systems, community water facility projects may provide service through installations for individual usage or for small clusters of users within the central system service area, but who are beyond the physical or economic limits of the central system, when it is more feasible to provide such service through individual or remote facilities in accordance with farmers home administration rules and regulations.

6-09.5-10. Rules and regulations. The Bank of North Dakota may promulgate and adopt such rules as are necessary to carry out the provisions of this chapter and meet the requirements of 7 U.S.C. 1926 and 1927 [Pub. L. 87-128; 75 Stat. 308], as amended through December 31, 1996, and the rules and regulations promulgated thereunder relating to community water facilities.

6-09.5-11. Powers of Bank of North Dakota. The Bank of North Dakota is authorized to do everything necessary to make revolving fund loans. This specifically includes the power to take such security as deemed necessary and to bring suit to collect interest and principal due the revolving fund under contracts and notes executed pursuant to this chapter.

CHAPTER 23-29

SOLID WASTE MANAGEMENT AND LAND PROTECTION ACT

23-29-07.6. Preconstruction site review. The department, in cooperation with the state engineer and the state geologist, shall develop criteria for siting a solid waste disposal facility based upon potential impact on environmental resources. Any application for a landfill permit received after the department develops siting criteria as required by this section must be reviewed for site suitability by the department after consultation with the state engineer and state geologist before any site development. Site development does not include the assessment or monitoring associated with the review as required by the department in consultation with the state engineer and state geologist.

**CHAPTER 23-33
GROUND WATER PROTECTION**

	<u>Page</u>
<u>Section</u>	
23-33-01 Degradation prevention program - Maintenance of waters	23-33: 1
23-33-02 Administration of chapter	23-33: 1
23-33-03 Education program	23-33: 1
23-33-04 Chemical use data and confidentiality requirement.....	23-33: 1
23-33-05 Ground water standards.....	23-33: 1
23-33-06 Ground water quality monitoring	23-33: 1
23-33-07 Notification requirement	23-33: 1
23-33-08 Access for ground water monitoring.....	23-33: 1
23-33-09 Pollution prevention criteria	23-33: 2
23-33-10 Wellhead protection program	23-33: 2
23-33-11 Rules	23-33: 2
23-33-12 Producer liability	23-33: 2

CHAPTER 23-33 GROUND WATER PROTECTION

23-33-01. Degradation prevention program - Maintenance of waters. This chapter establishes a degradation prevention program for the purpose of protecting ground water resources, encouraging the wise use of agricultural chemicals, providing for ground water protection, providing for public education regarding preservation of ground water resources, and providing for safe disposal of wastes in a manner that will not endanger the state's ground water resource. Waters of the state must be maintained within standards established under this chapter unless it can be affirmatively demonstrated that a change in quality is justifiable to provide necessary economic or social development and will not adversely affect the beneficial uses of water.

23-33-02. Administration of chapter. The state department of health shall administer this chapter. For purposes of this chapter, "commissioner" means the agriculture commissioner and "department" means the state department of health. Notwithstanding section 4-35-06, the agriculture commissioner shall administer chapter 4-35 as it relates to pesticide usage.

23-33-03. Education program. The department, the commissioner, and the North Dakota state university extension service and North Dakota agricultural experiment station shall cooperate with other state and federal agencies on the development of a ground water protection education program.

23-33-04. Chemical use data and confidentiality requirement. The department may require chemical use data from product registrants on products that have been or may likely be found in ground water in order to conduct its ground water protection program. This information must include chemical registration data and sales information. The department shall keep this information confidential.

23-33-05. Ground water standards. The department shall establish standards for compounds in ground water as set forth by other states and the United States environmental protection agency unless new scientifically confirmed data provides justification for changing these standards.

23-33-06. Ground water quality monitoring. The department shall conduct ground water quality monitoring activities in cooperation with the state engineer and other state agencies. Based on monitoring results, the department shall implement or require appropriate mitigation activities or remedial action to prevent future contamination of ground water. The commissioner may implement or require appropriate mitigation activities pursuant to chapter 4-35 to prevent future contamination of ground water as it relates to the use of pesticides.

23-33-07. Notification requirement. Any person with verifiable information on the presence of contamination of ground water within the state shall notify the department regarding such contamination.

23-33-08. Access for ground water monitoring. The department may request landowners or operators to allow access for monitoring of ground water and of soils at a depth where pesticides may threaten ground water. If the department is denied access by the landowner or operator, the department may apply to any court of competent jurisdiction for authorization to obtain access. The court, upon such application and upon compliance with chapter 29-29.1, may issue the authorization for the purposes requested. After consultation with the landowner or operator, the department shall conduct the monitoring in a manner that causes the least possible economic impact or hindrance to the landowner's or operator's operations. The names and addresses of landowners and operators who participate in a ground water monitoring program may not be linked, in any public disclosure, to the findings of the program unless it is determined by rule that a compelling public interest justifies such disclosure. Without such a determination, disclosure of the information is a violation of section 12.1-13-01.

23-33-09. Pollution prevention criteria. The commissioner, in cooperation with the department, North Dakota state university extension service, and the North Dakota agricultural experiment station, may develop pollution prevention criteria for areas utilized for mixing and storing of agricultural chemicals at the retail and end use levels.

23-33-10. Wellhead protection program. The department in cooperation with the state engineer and state geologist shall assist in implementing a public water supply wellhead protection program for protection of ground water resources utilizing existing state and local statutory authority.

23-33-11. Rules. The department, with the approval of the commissioner and the state engineer, shall adopt rules necessary for implementation of this chapter.

23-33-12. Producer liability. Liability may not be imposed upon an agricultural producer for costs of active cleanup, or for any damage associated with or resulting from the detection in ground water, of a pesticide if the applicator has complied with label instructions and other precautions for application of the pesticide and the applicator has a valid appropriate applicator's certification. Compliance with these requirements may be raised as an affirmative defense by an agricultural producer.

CHAPTER 24-03
CONSTRUCTION AND MAINTENANCE OF STATE HIGHWAY SYSTEM

		<u>Page</u>
<u>Section</u>		
24-03-06	Method of construction of highway ditches	24-03: 1
24-03-07	Drains across state highways.....	24-03: 1
24-03-08	Determination of surface water flow and appropriate highway construction.....	24-03: 1

CHAPTER 24-03

CONSTRUCTION AND MAINTENANCE OF STATE HIGHWAY SYSTEM

24-03-06. Method of construction of highway ditches. All highways constructed or reconstructed by the department, board of county commissioners, board of township supervisors, their contractors, subcontractors, or agents, or by any individual firm, corporation, or limited liability company must be so designed as to permit the waters running into the ditches to drain into coulees, rivers, and lakes according to the surface and terrain where the highway or highways are constructed in accordance with the stream crossing standards prepared by the department and the state engineer so as to avoid the waters flowing into and accumulating in the ditches to overflow adjacent and adjoining lands. In the construction of highways the natural flow and drainage of surface waters to the extent required to meet the stream crossing standards prepared by the department and the state engineer may not be obstructed, but the water must be permitted to follow the natural course according to the surface and terrain of the particular terrain. The department, county, township, their contractors, subcontractors, or agents, or any individual firm, corporation, or limited liability company is not liable for any damage caused to any structure or property by water detained by the highway at the crossing if the highway crossing has been constructed in accordance with the stream crossing standards prepared by the department and the state engineer.

24-03-07. Drains across state highways. The director, when notified by the board of drain commissioners of any drainage district that it is necessary to run a drain across any state or federal-aid highway, shall make the necessary opening through such highway and shall build and keep in repair suitable culverts or bridges, as provided in title 61.

24-03-08. Determinations of surface water flow and appropriate highway construction. Whenever and wherever a highway under the supervision, control, and jurisdiction of the department or under the supervision, control, and jurisdiction of the board of county commissioners of any county or the board of township supervisors has been or will be constructed over a watercourse or draw into which flow surface waters from farmlands, the state engineer, upon petition of the majority of landowners of the area affected or at the request of the board of county commissioners, township supervisors, or a water resource board, shall determine as nearly as practicable the design discharge that the crossing is required to carry to meet the stream crossing standards prepared by the department and the state engineer. When the determination has been made by the state engineer, the department, the board of county commissioners, or the board of township supervisors, as the case may be, upon notification of the determination, shall install a culvert or bridge of sufficient capacity to permit the water to flow freely and unimpeded through the culvert or under the bridge. The department, county, and township are not liable for any damage to any structure or property caused by water detained by the highway at the crossing if the highway crossing has been constructed in accordance with the stream crossing standards prepared by the department and the state engineer.

**CHAPTER 24-06
LOCAL ROAD IMPROVEMENTS**

		<u>Page</u>
<u>Section</u>		
24-06-26	Ditches to drain highways - Proceedings to establish	24-06: 1
24-06-26.1	Township road and drainage construction standards.....	24-06: 1
24-06-26.2	Maintenance of township road ditches - Limited duty.....	24-06: 1
24-06-26.3	Maintenance of township road ditches by private party - Power of board of township supervisors - Approval - Standards of construction	24-06: 2
24-06-34	Notice to water resource districts	24-06: 2

CHAPTER 24-06

LOCAL ROAD IMPROVEMENTS

24-06-26. Ditches to drain highways - Proceedings to establish. Whenever any overseer of highways files with the board of township supervisors or with the board of county commissioners, as the case may be, the overseer's affidavit stating that a certain road in the overseer's district runs into or through swamp, bog, meadow, or other lowland, and that it is necessary or expedient that a ditch should be constructed and maintained through land belonging to any person, and also stating the probable length of such ditch and the width and depth of the same as near as may be, the point at which it is to commence, its general course and the point at or near which it is to terminate, the names of the persons owning the land, if known, and a description of the land over which such ditch must pass, the board of township supervisors or board of county commissioners, as the case may be, if the right to construct and maintain such ditch is not given voluntarily by the person owning the land over which it is to pass, shall cause proceedings to be instituted in its name under the provisions of chapter 32-15 to acquire the right to construct and maintain the same.

24-06-26.1. Township road and drainage construction standards. Whenever the construction or reconstruction of a township road or bridge, the insertion of a culvert in a township road, or the construction or reconstruction of a ditch or drain in connection with a township road affects the flow of surface waters and increases the surface waterflow through ditches, drains, bridges, and culverts in other townships, the board of township supervisors or the township overseer of highways of the township undertaking the construction or reconstruction shall give notice to the boards of township supervisors or township overseers of highways in all townships affected by the construction or reconstruction projects.

The boards of township supervisors of townships affected by any road or bridge construction that changes or increases the flow of surface waters shall cooperate in the construction projects expending on any portion of the projects the portions of the road and bridge tax as deemed conducive to the interests of the township. The board of township supervisors shall construct the ditches, drains, bridges, and culverts in accordance with stream crossing standards prepared by the department and the state engineer. A township, board of township supervisors, and township overseer of highways are not liable for any damage caused to any structure or property by water detained by the highway at the crossing if the highway crossing has been constructed in accordance with the stream crossing standards prepared by the department and the state engineer.

24-06-26.2. Maintenance of township road ditches - Limited duty. The party with an interest in land adjacent to a township road is not responsible for maintaining that ditch unless improper conservation practices on that party's adjoining land have led to unreasonable wind and water erosion, not commonly experienced in the locality, which resulted in conditions adversely affecting the ditch. On the occurrence of such improper conservation practices, the board of township supervisors may require the adjoining party with an interest in the land to clean the ditch at that party's expense. If that party fails to clean the ditch, the procedures applicable to the duty to cut weeds under chapter 63-05 apply with respect to the cleaning of the ditch.

24-06-26.3. Maintenance of township road ditches by private party - Power of board of township supervisors - Approval - Standards of construction. The board of township supervisors may authorize any private party to maintain, clean, or shape a ditch along a township road at that party's own expense and in accordance with this section. In maintaining, cleaning, or shaping a ditch, the private party may not spread any soil or debris from that ditch along adjoining land without the permission of all parties with an interest in that land. The ditch may be on a continuous grade from the bottom of the upstream water outlet to the bottom of the downstream water outlet structure. The grade ratio in that distance must be a slope that, in light of the soil types and potential for vegetative cover in the ditch, will resist erosion. In order for any action to be considered maintenance of a ditch in accordance with this section, the ditch must be entirely contained within the township right of way, must have a bottom that is not wider than twelve feet [3.66 meters], and may not alter the side slope of the ditch to a slope steeper than the existing side slope. The board of township supervisors may not approve private maintenance of a ditch that does not comply with the standards of this section. If the board of township supervisors denies permission to maintain a ditch under this section, the petitioner may appeal that decision to the water resource board that has jurisdiction over the ditch. This section does not relieve any person from compliance with any requirements for a drainage permit which are required by statute or rule.

24-06-34. Notice to water resource districts. Whenever a county or township plans to construct or reconstruct a bridge, install or modify a culvert, or construct or reconstruct a drain in connection with a roadway or railway, the county or township shall provide notice in any way to the water resource board of the water resource district in which is located the bridge, culvert, or drain. This notice must be given at least thirty days prior to the date construction or reconstruction is to begin. The water resource board may submit comments concerning the construction or reconstruction to the appropriate officials of the county or township. This section does not apply in times of emergency, unexpected events, or acts of God.

CHAPTER 28-34

LOCAL GOVERNING BODY DECISION APPEAL

28-34-01. Appeals from local governing bodies - Procedures. This section, to the extent that it is not inconsistent with procedural rules adopted by the North Dakota supreme court, governs any appeal provided by statute from the decision of a local governing body, except those court reviews provided under sections 2-04-11 and 40-51.2-15. For the purposes of this section, "local governing body" includes any officer, board, commission, resource or conservation district, or other political subdivision. Each appeal is governed by the following procedure:

1. The notice of appeal must be filed with the clerk of the court within thirty days after the decision of the local governing body. A copy of the notice of appeal must be served on the local governing body in the manner provided by rule 4 of the North Dakota Rules of Civil Procedure.
2. The appellee shall prepare and file a single copy of the record on appeal with the court. Within thirty days, or such longer time as the court by order may direct, after the notice of appeal has been filed in the court, and after the deposit by the appellant of the estimated cost of a transcript of the evidence, the local governing body shall prepare and file in the office of the clerk of the court in which the appeal is pending the original or a *certified* copy of the entire proceedings before the local governing body, or such abstract of the record as may be agreed upon and stipulated by the parties, including the pleadings, notices, transcripts of all testimony taken, exhibits, reports or memoranda, exceptions or objections, briefs, findings of fact, proposed findings of fact submitted to the local governing body, and the decision of the local governing body in the proceedings. If the notice of appeal specifies that no exception or objection is made to the local governing body's findings of fact, and that the appeal is concerned only with the local governing body's conclusions based on the facts found by it, the evidence submitted at the hearing before the local governing body must be omitted from the record filed in the court. The court may permit amendments or additions to the record to complete the record.
3. If the court determines on its own motion or if an application for leave to adduce additional evidence is made to the court in which an appeal from a determination from a local governing body is pending, and it is shown to the satisfaction of the court that such additional evidence is material and that there are reasonable grounds for the failure to adduce such evidence in the hearing or proceeding had before the local governing body, or that such evidence is material to the issues involved and was rejected or excluded by the local governing body, the court may order that such additional evidence be taken, heard, and considered by the local governing body on such terms and conditions as the court may determine. After considering the additional evidence, the local governing body may amend or modify its decision and shall file with the court a transcript of the additional evidence together with its new or modified decision, if any.

CHAPTER 37-17.1

EMERGENCY SERVICES

37-17.1-11. Disaster or emergency mitigation.

1. In addition to disaster or emergency mitigation measures as included in the state and local disaster or emergency operational plans, the governor shall consider, on a continuing basis, steps that could be taken to mitigate or reduce the harmful consequences of disasters or emergencies. At the governor's direction, and pursuant to any other authority and capability they have, state agencies charged with responsibilities in connection with floodplain management, stream encroachment and flow regulation, weather modification, fire prevention and control, air quality, public works, land use and land use planning, and construction standards, shall make studies of disaster or emergency mitigation-related matters. The governor, from time to time, shall make recommendations to the legislative assembly, local governments, and other appropriate public and private entities as may facilitate measures for mitigation or reduction of the harmful consequences of disasters or emergencies.
2. The North Dakota state engineer and the water commission, in conjunction with the division of homeland security, shall keep land uses and construction of structures and other facilities under continuing study and identify areas which are particularly susceptible to severe land shifting, subsidence, flood, or other catastrophic occurrence. The studies under this subsection must concentrate on means of reducing or avoiding the dangers caused by this occurrence or the consequences thereof.
3. If the division of homeland security determines, in coordination with lead and support agencies, on the basis of the studies or other competent evidence, that an area is susceptible to a disaster of catastrophic proportions without adequate warning; existing building standards and land use controls in that area are inadequate and could add substantially to the magnitude of the disaster or emergency; and changes in zoning regulations, other land use regulations, or building requirements are needed in order to further the purposes of this section, it shall specify the essential changes to the governor. If the governor, upon review of the determination, finds after public hearing, that the changes are essential, the governor shall so recommend to the agencies or local governments with jurisdiction over that area and subject matter. If no action or insufficient action pursuant to the governor's recommendations is taken within the time specified by the governor, the governor shall so inform the legislative assembly and request legislative action appropriate to mitigate the impact of the disaster or emergency.
4. The governor, at the same time that the governor makes recommendations pursuant to subsection 3, may suspend the standard or control which the governor finds to be inadequate to protect the public safety and by regulation place a new standard or control in effect. The new standard or control remains in effect until rejected by concurrent resolution of both houses of the legislative assembly or amended by the governor. During the time it is in effect, the standard or control contained in the governor's regulation must be administered and given full effect by all relevant regulatory agencies of the state and local governments to which it applies. The governor's action is subject to judicial review in accordance with chapter 28-32 but is not subject to temporary stay pending litigation.

CHAPTER 38-11.1

OIL AND GAS PRODUCTION DAMAGE COMPENSATION

38-11.1-06. Protection of surface and ground water - Other responsibilities of mineral developer. If the domestic, livestock, or irrigation water supply of any person who owns an interest in real property within one-half mile [804.67 meters] of where geophysical or seismograph activities are or have been conducted or within one mile [1.61 kilometers] of an oil or gas well site has been disrupted, or diminished in quality or quantity by the drilling operations and a certified water quality and quantity test has been performed by the person who owns an interest in real property within one year preceding the commencement of drilling operations, the person who owns an interest in real property is entitled to recover the cost of making such repairs, alterations, or construction that will ensure the delivery to the surface owner of that quality and quantity of water available to the surface owner prior to the commencement of drilling operations. Any person who owns an interest in real property who obtains all or a part of that person's water supply for domestic, agricultural, industrial, or other beneficial use from an underground source has a claim for relief against a mineral developer to recover damages for disruption or diminution in quality or quantity of that person's water supply proximately caused from drilling operations conducted by the mineral developer. Prima facie evidence of injury under this section may be established by a showing that the mineral developer's drilling operations penetrated or disrupted an aquifer in such a manner as to cause a diminution in water quality or quantity within the distance limits imposed by this section. An action brought under this section when not otherwise specifically provided by law must be brought within six years of the time the action has accrued. For purposes of this section, the claim for relief is deemed to have accrued at the time it is discovered or might have been discovered in the exercise of reasonable diligence.

A tract of land is not bound to receive water contaminated by drilling operations on another tract of land, and the owner of a tract has a claim for relief against a mineral developer to recover the damages proximately resulting from natural drainage of waters contaminated by drilling operations.

The mineral developer is also responsible for all damages to person or property resulting from the lack of ordinary care by the mineral developer or resulting from a nuisance caused by drilling operations. This section does not create a cause of action if an appropriator of water can reasonably acquire the water under the changed conditions and if the changed conditions are a result of the legal appropriation of water by the mineral developer.

CHAPTER 38-14.1
SURFACE MINING AND RECLAMATION OPERATIONS

<u>Section</u>	<u>Page</u>
38-14.1-02(4) Definitions	38-14.1: 1
38-14.1-03 Powers and duties of the commission	38-14.1: 1
38-14.1-21 Permit approval or denial standards	38-14.1: 2
38-14.1-24 Environmental protection performance standards	38-14.1: 4
38-14.1-25 Prohibited mining practices	38-14.1: 9

CHAPTER 38-14.1

SURFACE MINING AND RECLAMATION OPERATIONS

(SUBSECTION 4 OF SECTION 38-14.1-02)

4. "Commission" means the public service commission, or such other department, bureau, or commission as may lawfully succeed to the powers and duties of that commission. The commission is the state regulatory authority for all purposes relating to the Surface Mining Control and Reclamation Act of 1977 [Pub. L. 95-87; 91 Stat. 445; 30 U.S.C. 1201 et seq.].

38-14.1-03. Powers and duties of the commission. The commission shall have and may exercise the following powers and duties:

1. To establish a program to protect society and the environment from the adverse effects of surface coal mining operations.
2. To assure that surface coal mining operations are so conducted as to protect the environment.
3. To assure that adequate procedures are undertaken to reclaim surface areas as contemporaneously as possible with the surface coal mining operations.
4. To assure that surface coal mining operations are not conducted where reclamation as required by this chapter is not feasible.
5. To assure that appropriate procedures are provided for public participation in the development, revision, and enforcement of regulations, standards, reclamation plans, or programs established by the commission under this chapter.
6. To encourage the voluntary cooperation of persons or affected groups to achieve the purposes of this chapter.
7. To encourage and support training, research, experiments, and demonstrations, to utilize the expertise of other state agencies, and to collect and disseminate information relating to surface mining and reclamation of lands and waters affected by surface mining.
8. To examine and act upon all plans and specifications submitted by the permit applicant for the method of operation, backfilling, grading, and for the reclamation of the area of land affected by the permit applicant's operation.
9. To attach conditions to all permits and permit revisions as necessary to carry out the provisions of this chapter.
10. To issue permits for surface coal mining operations in accordance with the requirements of this chapter and the Surface Mining Control and Reclamation Act of 1977 [Pub. L. 95-87; 91 Stat. 445; 30 U.S.C. 1201 et seq.].
11. To promulgate such regulations as may be necessary to carry out the purposes and provisions of this chapter and the Surface Mining Control and Reclamation Act of 1977 [Pub. L. 95-87; 91 Stat. 445; 30 U.S.C. 1201 et seq.].
12. To promulgate regulations consistent with state law, in consultation with the state geologist, state department of health, and the state engineer for the protection of the quality and quantity of waters affected by surface coal mining operations.
13. To promulgate regulations requiring the training, examination, and certification of persons engaged in or directly responsible for blasting or use of explosives in surface coal mining and reclamation operations.

14. To exercise general supervision and administration and enforcement of this chapter and all regulations and orders promulgated thereunder and all incidental powers necessary to carry out the purposes of this chapter, including the utilization of the powers of other state agencies by delegation to those other state agencies, by cooperative agreement or regulation, certain responsibilities to avoid duplication of effort, to promote the efficient use of personnel, and to assure effective reclamation of surface mined lands in the state of North Dakota.
15. To make investigations and inspections which may be deemed necessary to ensure compliance with any provision of this chapter. The commission or its authorized representatives, upon presentation of appropriate credentials, shall have the right of entry without a warrant for the purposes of such investigations or inspections.
16. To issue such orders as may be necessary to effectuate the purposes of this chapter and enforce the same by all appropriate administrative and judicial procedures.
17. To hold any hearings and informal conferences necessary for the proper administration of this chapter.
18. To reclaim, in keeping with this chapter, any land with respect to which a performance bond has been forfeited.
19. To exercise those additional powers and duties relative to the designation of lands unsuitable for surface coal mining operations granted in section 38-14.1-04.
20. To take all action necessary and appropriate including the promulgation of regulations for all provisions of this chapter to secure for this state the benefits of and to implement the Surface Mining Control and Reclamation Act of 1977 [Pub. L. 95-87; 91 Stat. 445; 30 U.S.C. 1201 et seq.] and similar federal acts.
21. To advise, consult, and cooperate with other agencies of the state, other states and interstate agencies, and with affected groups, political subdivisions, and industries in furtherance of the purposes of this chapter.
22. To accept and administer loans and grants from the federal government and from other sources, public or private, for carrying out any functions pursuant to this chapter, which loans and grants may not be expended for other than the purposes for which provided.
23. To provide by regulation standards and procedures for specific variances to any permittee so long as the permittee affirmatively demonstrates that the requested variance provides equal or greater protection to the environment and to public health and safety and will achieve reclamation consistent with the purposes of this chapter.
24. To provide by regulation for the conservation and utilization of other minerals found within the permit area during surface coal mining and reclamation operations in consultation with the state geologist and to approve plans for the use of such other minerals outside the permit area so long as the permittee affirmatively demonstrates that such removal is lawful and will provide equal or greater protection to the environment and to public health and safety and will achieve reclamation consistent with the purposes of this chapter.
25. To exercise the full reach of the state constitutional powers wherever necessary to ensure the protection of the public interest through effective control of surface coal mining operations.
26. To establish a performance bonding system and an alternative to the performance bonding system which achieve the objectives and purposes of this chapter.

38-14.1-21. Permit approval or denial standards.

1. Upon the basis of a complete mining application and reclamation plan or a revision thereof as required by this chapter and pursuant to regulations established under this chapter, the commission shall grant, require modification of, or deny the application for a permit and

notify the applicant in writing within a reasonable time as established by regulation if no informal conference is held and if an informal conference is held, within thirty days of such conference. The applicant for a permit, or a revision of a permit, has the burden of establishing that the application is in compliance with all the requirements of this chapter. Within ten days after the granting of a permit, the commission shall notify the appropriate local governmental officials in the county in which the area of land to be affected is located that a permit has been issued and shall describe the location of the land.

2. The commission's approval or modification of the permit or permit revision application must include consideration of the advice and technical assistance of the state historical society, the state department of health, the state soil conservation committee, the state game and fish department, the state forester, the state geologist, and the state engineer, and may also include those state agencies versed in soils, agronomy, ecology, geology, and hydrology, and other agencies and individuals experienced in reclaiming surface mined lands.
3. No permit or revision application may be approved unless the applicant affirmatively demonstrates and the commission finds in writing on the basis of the information set forth in the application or from information otherwise available which will be documented in the approval and made available to the applicant, that all the following requirements are met:
 - a. The permit application is accurate and complete and all the requirements of this chapter and of regulations promulgated by the commission have been complied with.
 - b. The permit applicant has demonstrated that reclamation as required by this chapter and by regulations promulgated by the commission can be accomplished under the reclamation plan contained in the permit application.
 - c. The assessment of the probable cumulative impact of all anticipated mining in the area on the hydrologic balance specified in subdivision o of subsection 1 of section 38-14.1-14 has been made by the commission and the proposed operation thereof has been designed to prevent material damage to the hydrologic balance outside the permit area.
 - d. The area proposed to be mined is not included within an area designated unsuitable for all or certain types of surface coal mining operations pursuant to section 38-14.1-05 or is not within an area under study for such designation in an administrative proceeding, provided the petition to have an area so designated has been filed prior to or within the time period specified in subsection 1 of section 38-14.1-18, or unless in such an area as to which an administrative proceeding has commenced, the permit applicant demonstrates that prior to January 4, 1977, the permit applicant has made substantial legal and financial commitments in relation to the operation for which the applicant is applying for a permit.
 - e. The proposed surface coal mining operation, if located west of the one hundredth meridian west longitude, would:
 - (1) Not interrupt, discontinue, or preclude farming on alluvial valley floors that are irrigated or naturally subirrigated, but, excluding undeveloped rangelands which are not significant to farming on said alluvial valley floors and those lands as to which the commission finds that if the farming that will be interrupted, discontinued, or precluded is of such small acreage [hectareage] as to be of negligible impact on the farm's agricultural production; or
 - (2) Not materially damage the quantity or quality of water in surface or underground water systems that supply these alluvial valley floors. This subdivision does not affect those surface coal mining operations which on July 1, 1979, produce coal in commercial quantities and are located within or adjacent to alluvial valley floors or have obtained specific permit approval by the commission to conduct surface coal mining operations within said alluvial valley floors.

- f. In cases where the mineral estate has been severed from the surface estate, the applicant has complied with the requirements of chapter 38-18.
4. The commission may delete certain areas from a permit or revision application, reject the application, require the permit applicant to amend the application or any part of such application, including any mining plan, or require any combination of the foregoing, if:
 - a. The commission finds that the overburden on any part of the area of land described in the application for a permit is such that experience in the state of North Dakota with a similar type of operation upon land with similar overburden shows that substantial deposition of sediment in stream beds, landslides, water pollution, or permanent destruction of land for agricultural purposes without approved rehabilitation for other uses cannot feasibly be prevented.
 - b. The commission finds that the proposed surface coal mining operation will constitute a hazard to a dwelling house, public building, school, church, cemetery, commercial or institutional building, public road, stream, lake, or other public or private property other than property subject to a coal lease.

Whenever the commission finds that ongoing surface mining operations are causing or are likely to cause any of the conditions set forth in this subsection, it may make such changes in the permit as it may deem necessary to avoid such described conditions.

5. Where information available to the commission indicates that any surface coal mining operation owned or controlled by the permit applicant is currently in violation of this chapter, the Surface Mining Control and Reclamation Act of 1977 [Pub. L. 95-87; 91 Stat. 445; 30 U.S.C. 1201 et seq.], or any law or rule of the United States or the state of North Dakota, or of any department or agency in the United States or the state of North Dakota pertaining to air or water environmental protection, the permit may not be issued until the permit applicant submits proof that such violation has been corrected or is in the process of being corrected to the satisfaction of the regulatory authority with jurisdiction over the violation.
6. In addition to finding the application in compliance with other requirements of this section, if the area proposed to be mined contains prime farmland pursuant to paragraph 3 of subdivision a of subsection 2 of section 38-14.1-14, the commission shall, pursuant to regulations issued by the commission, grant a permit to mine on prime farmland if the commission finds in writing that the permit applicant has the technological capability to restore such mined area, within a reasonable time, to a level of productivity equal to or greater than nonmined prime farmland in the surrounding area under equivalent levels of management and can meet the soil reconstruction standards in subsection 6 of section 38-14.1-24. Nothing in this chapter pertaining to prime farmland applies to any permit issued prior to July 1, 1979, or to any revisions or renewals thereof, or to any existing surface coal mining operations for which a permit was issued prior to July 1, 1979.

38-14.1-24. Environmental protection performance standards. General performance standards are applicable to all surface coal mining and reclamation operations and must require the permittee at a minimum to:

1. Conduct surface coal mining operations so as to maximize the utilization and conservation of the coal being recovered so that re-affecting the land in the future through surface coal mining can be minimized.
- 1.1. Conduct any auger mining associated with surface coal mining operations in a manner that will maximize recoverability of coal and other mineral reserves remaining after mining activities and reclamation operations are completed, and seal or fill all auger holes as necessary to ensure long-term stability of the area and minimize any adverse impact to the environment or hazard to public health or safety. The commission may prohibit auger mining if necessary to maximize the utilization, recoverability, or conservation of coal resources, to ensure long-term stability, or to protect against any adverse impact to the environment or hazard to public health or safety.

2. Restore the land affected to a condition capable of supporting the uses which it was capable of supporting prior to any mining, or higher or better uses approved by the commission, which may include industrial, commercial, agricultural, residential, recreational, or public facilities. In approving the postmining land use, or changes thereto, the commission shall establish by regulation postmining land use criteria that must be demonstrated by the permittee and considered by the commission in making its decision.
3. Backfill, compact (where advisable to ensure stability or to prevent leaching of toxic materials), and grade to reshape all areas affected by surface coal mining operations to the gentlest topography consistent with adjacent unmined landscape elements in order to develop a postmining landscape that will provide for maximum moisture retention, drainage that will complement the surrounding terrain, maximum stability, minimum soil losses from runoff and erosion, with all highwalls, spoil piles, and depressions eliminated (unless small depressions are needed in order to retain moisture to assist revegetation or as otherwise authorized pursuant to this chapter), and with maximum postmining graded slopes that do not exceed the approximate original contour; provided, however, that:
 - a. A different contour or topography may be required by the commission to better achieve the approved postmining land use.
 - b. The permittee, at a minimum, shall backfill, grade, and compact (where advisable) using all available overburden and other spoil and waste materials to attain the lowest practicable grade (not to exceed the angle of repose), to provide adequate drainage, and to contain all toxic materials in order to achieve an ecologically sound land use compatible with the surrounding region, in those instances where:
 - (1) Surface coal mining operations are carried out over a substantial period of time at the same location where the operation transects the coal deposit;
 - (2) The thickness of the coal deposits relative to the volume of overburden is large; and
 - (3) The permittee demonstrates that the overburden and other spoil and waste materials at a particular point in the permit area or otherwise available from the entire permit area are insufficient, giving due consideration to volumetric expansion, to restore the approximate original contour.
4. Stabilize and protect all surface areas, including spoil piles affected by the surface coal mining and reclamation operation, to effectively control erosion and attendant air and water pollution.
5. Remove, segregate, and respread suitable plant growth material as required by the commission within the permit area. The commission may require the permittee to segregate suitable plant growth material in two or more soil layers. The commission shall determine the soil layer or layers to be removed based upon the quality and quantity of suitable plant growth material inventoried by the soil survey required in subdivision t of subsection 1 of section 38-14.1-14. Based on the soil survey, the commission shall also determine whether other suitable strata are necessary to meet revegetation requirements. If other strata can be shown to be suitable and necessary to meet revegetation requirements, the commission may require the permittee to determine the areal extent of other suitable strata within the proposed permit area, and to remove, segregate, protect, and respread such material. If the suitable plant growth material or other suitable strata cannot be replaced on an approved graded area within a time short enough to avoid deterioration of such material, the permittee shall stockpile and stabilize such materials by establishing a successful cover of quick growing plants or by other means thereafter so that the suitable plant growth material or other suitable strata will be protected from wind and water erosion and will remain free from any contamination by toxic material. In the interest of achieving the maximum reclamation provided for in this chapter, the permittee may, or at the discretion of the commission shall, utilize such soil amendments as described in subsection 27 of section 38-14.1-02.

6. For all prime farmlands as identified in paragraph 3 of subdivision a of subsection 2 of section 38-14.1-14 to be mined and reclaimed, the permittee shall, at a minimum, be required to:
 - a. Segregate the A horizon of the natural soil or a combination of the A horizon materials and other available suitable plant growth materials that will create a final soil having a productive capacity equal to or greater than that which existed prior to mining; and if not utilized immediately, stockpile this material and provide needed protection from wind and water erosion or contamination;
 - b. Segregate the B horizon of the natural soil, or underlying C horizons or other strata, or a combination of such horizons or other strata that are shown to be physically and chemically suitable for plant growth and that can be shown to be equally or more favorable for plant growth than the B horizon, in sufficient quantities to create in the regraded final soil a root zone of comparable depth and quality to that which existed in the natural soil. If not utilized immediately, such material must be stockpiled and provided needed protection from wind and water erosion or contamination;
 - c. Replace the material described in subdivision b with proper compaction and uniform depth as determined by the commission over the regraded spoil material; and
 - d. Redistribute in a uniform manner as determined by the commission the surface soil described in subdivision a.
7. Create, if authorized in the approved mining and reclamation plan and permit, as part of reclamation activities, permanent water impoundments in accordance with the requirements of the state engineer pursuant to other applicable state law and all of the following standards:
 - a. The size of the impoundment will be adequate for its intended purposes.
 - b. The impoundment dam construction will be designed to achieve necessary stability with an adequate margin of safety compatible with the requirements of applicable state law.
 - c. The quality of impounded water will be suitable on a permanent basis for its intended use and discharges from the impoundment will not exceed the quality limitations imposed by the North Dakota pollutant discharge elimination system or degrade the water quality below water quality standards established pursuant to this chapter, whichever is more stringent.
 - d. The level of water will be reasonably stable.
 - e. Final grading will provide adequate safety and access for maintenance and proposed water users.
 - f. Such water impoundments will not result in the diminution of the quality or quantity of water utilized by adjacent or surrounding landowners for agricultural, industrial, recreational, or domestic uses.
8. Minimize the disturbances to the prevailing hydrologic balance at the minesite and in associated offsite areas and to the quality and quantity of water in surface and ground water systems both during and after surface coal mining operations and during reclamation by:
 - a. Avoiding toxic mine drainage by such measures as, but not limited to:
 - (1) Preventing water from coming in contact with, or removing water from, toxic producing deposits.
 - (2) Treating drainage to reduce toxic content which adversely affects downstream water upon being released to watercourses.

- (3) Casing, sealing, or otherwise managing boreholes and wells to keep toxic drainage from entering ground and surface waters.
 - b. Conducting surface coal mining operations so as to prevent, to the extent possible using the best technology currently available, additional contribution of suspended solids to streamflow, or runoff outside the permit area, but in no event may contributions be in excess of requirements set by applicable state law.
 - c. Constructing any siltation structures pursuant to subdivision b prior to commencement of surface coal mining operations, such structures to be certified by a registered professional engineer to be constructed as designed and as approved in the reclamation plan.
 - d. Cleaning out and removing temporary settling ponds or other siltation structures from drainways after disturbed areas are revegetated and stabilized, and depositing the silt and debris at a site and in a manner approved by the commission.
 - e. Restoring recharge capacity of the mined area to approximate premining conditions to the extent possible using the best technology currently available.
 - f. Avoiding natural channel deepening or enlargement in operations requiring the discharge of water from mines.
 - g. Preserving throughout the surface coal mining and reclamation process the essential hydrologic functions of alluvial valley floors.
 - h. Such other actions as the commission may prescribe.
- 9. Make such repairs, alterations, or construction as necessary to ensure the delivery of that quality and quantity of water available prior to mining to a surface owner whose supply of water for domestic, agricultural, industrial, or other legitimate use has been disrupted or diminished in quality or quantity by the surface coal mining operation. Such repairs, alterations, or construction must be considered to be part of reclamation and must be made at no cost to the surface owner. Nothing in this chapter may be construed as affecting in any way the right of any person to enforce or protect, under applicable law, his interest in water resources affected by a surface coal mining operation.
 - 10. Remove or bury all debris and other similar material resulting from the operation and bury all mine wastes and coal processing wastes unless the commission approves the surface disposal of such wastes. If the commission approves the surface disposal of such wastes, the permittee shall stabilize all waste piles in designated areas through construction in compacted layers, including the use of incombustible and impervious materials if necessary, to assure that the final contour of the waste pile will be compatible with natural surroundings and that the site can and will be stabilized and revegetated according to the provisions of this chapter.
 - 11. Refrain from surface coal mining within five hundred feet [152.4 meters] of underground mines in order to prevent breakthroughs; provided, that the commission shall allow a permittee to mine near, through, or partially through an underground mine if such operations will result in improved resource recovery, abatement of water pollution, or elimination of hazards to the health and safety of the public.
 - 12. Ensure that all debris, toxic materials, or materials constituting a fire hazard are treated or buried and compacted or otherwise disposed of in a manner designed to prevent contamination of ground or surface waters and that contingency plans are developed to prevent sustained combustion. If a fire hazard exists, the commission has the authority to require the permittee to take such actions as are necessary to abate the hazard, both inside and outside the permit area.
 - 13. Ensure that explosives are used only in accordance with existing state law and the regulations promulgated by the commission, which must include provisions to:

- a. Provide adequate advance written notice to local governments and residents who might be affected by the use of such explosives by the publication of the planned blasting schedule in a newspaper of general circulation in the locality, by mailing a copy of the proposed blasting schedule to every resident living within one-half mile [804.67 meters] of the proposed blasting site, and by providing daily notice to residents in such areas prior to any blasting.
 - b. Maintain for a period of at least three years and make available for public inspection upon request a log detailing the location of the blasts, the pattern and depth of the drill holes, the amount of explosives used per hole, and the order and length of delay in the blasts.
 - c. Limit the type of explosives and detonating equipment, the size, the timing, and the frequency of blasts based upon the physical conditions of the site so as to prevent:
 - (1) Injury to persons.
 - (2) Damage to public and private property outside the permit area.
 - (3) Change in the course, channel, or availability of ground or surface water outside the permit area.
 - d. Require that all blasting operations be conducted by trained and competent persons as certified by the commission.
 - e. Provide that upon the request of a resident or owner of a manmade dwelling or structure within one mile [1.61 kilometers] of any portion of the permitted area the permittee shall conduct a preblasting survey of such structures and submit the survey to the commission and a copy to the resident or owner making the request. The area of the survey must be decided by the commission and must include such provisions as the commission may promulgate.
14. Ensure that all reclamation efforts proceed in an environmentally sound manner and as contemporaneously as practicable with the surface coal mining operations, provided that all reclamation through the initial planting on any land within the permit area must be completed by the operator no later than three years from completion of surface coal mining operations on such lands, unless otherwise prescribed by the commission.
 15. Ensure that the construction, maintenance, and postmining conditions of haul roads and access roads into and across the site of operations will control or prevent erosion and siltation, pollution of water, damage to fish or wildlife or their habitat, or public or private property.
 16. Refrain from the construction of haul roads and access roads up a streambed or drainage channel or in such proximity to such channel so as to seriously alter the normal flow of water.
 17. Restore lands affected by the surface coal mining operation which have been designated for postmining agricultural purposes to the level of productivity equal to or greater, under equivalent management practices, than nonmined agricultural lands of similar soil types in the surrounding area. For those lands which are to be rehabilitated to native grasslands, a diverse, effective, and permanent vegetative cover must be established of the same seasonal variety native to the area to be affected and capable of self-regeneration, plant succession, and at least equal in extent of cover and productivity to the natural vegetation of the area. The level of productivity and cover attained on disturbed lands within the permit area must be demonstrated by the permittee using comparisons with similar lands in the surrounding area having equivalent historical management practices and that are undisturbed by mining, or comparable disruptive activities.
 18. Assume the responsibility for successful revegetation, as required by subsection 17, for a period of ten full years after the last year of augmented seeding, fertilizing, irrigation, or other work, provided that, when the commission approves a long-term intensive

agricultural postmining land use, the ten-year period of responsibility for revegetation commences at the date of initial planting. For the purposes of this subsection, "augmented seeding, fertilizing, irrigation, or other work" does not include normal conservation practices recognized locally as good management for the postmining land use.

19. Place all spoil material from the initial pit or other excess spoil material resulting from surface coal mining and reclamation activities in such a manner that all of the following requirements are met:
 - a. Spoil is transported and placed in a controlled manner in position for concurrent compaction and in such a way so as to assure mass stability and to prevent mass movement.
 - b. The areas of disposal are within the bonded permit areas.
 - c. Appropriate surface and internal drainage systems and diversion ditches are used so as to minimize spoil erosion and movement.
 - d. The disposal area does not contain springs, natural watercourses, or wet weather seeps unless lateral drains are constructed from the wet areas to the main underdrains in such a manner that filtration of the water into the spoil pile will be prevented.
 - e. If placed on a slope, the spoil is placed upon the most moderate slope among those upon which, in the judgment of the commission, the spoil could be placed in compliance with all the requirements of this chapter.
 - f. The final configuration is compatible with the natural drainage pattern and surroundings and suitable for intended uses.
 - g. Design of the spoil disposal area is certified by a registered professional engineer in conformance with professional standards.
 - h. All other provisions of this chapter are met.
20. Meet such other criteria as are necessary to achieve reclamation in accordance with the purposes of this chapter, taking into consideration the physical, climatological, and other characteristics of the site.
21. To the extent possible using the best technology currently available, minimize disturbances and adverse impacts of the surface coal mining operation on fish, wildlife, and related environmental values, and achieve enhancement of such resources where practicable.

38-14.1-25. Prohibited mining practices.

1. No permittee may use any coal mine waste piles consisting of mine wastes, tailings, coal processing wastes, or other liquid or solid wastes either temporarily or permanently as dams or embankments unless approved by the commission, after consultation with the state engineer.
2. No permittee may locate any part of the surface coal mining and reclamation operations or deposit overburden, debris, or waste materials outside the permit area for which bond has been posted, except as provided in subsection 24 of section 38-14.1-03.
3. No permittee may deposit overburden, debris, or waste materials in such a way that normal erosion or slides brought about by natural causes will permit the same to go beyond or outside the permit area for which bond has been posted.

CHAPTER 43-07 CONTRACTORS

<u>Section</u>	<u>Page</u>
43-07-01	Definitions 43-07: 1
43-07-02	License required..... 43-07: 1
43-07-03	Registrar designated 43-07: 1
43-07-04	License - How obtained - Failure to grant - Revocation 43-07: 1
43-07-04.1	Conviction not bar to licensure - Exceptions 43-07: 2
43-07-05	Classes of licenses 43-07: 3
43-07-06	Administrative and governing bodies may impose requirements 43-07: 3
43-07-07	License fees 43-07: 3
43-07-08	Exceptions 43-07: 3
43-07-09	Duty of registrar - Expiration of license 43-07: 3
43-07-09.1	Name changes..... 43-07: 3
43-07-10	Renewal of license - Grounds for nonrenewal - Time requirements - Invalidity of license for failure to renew 43-07: 4
43-07-11	[Repealed]..... 43-07: 4
43-07-11.1	Contracts with state..... 43-07: 4
43-07-12	Bids to show license issued 43-07: 5
43-07-13	Records and certified copies thereof..... 43-07: 5
43-07-14	Complaint for license revocation - Consumer fraud action 43-07: 5
43-07-15	Revocation or suspension of license - Restitution - Civil penalties - Appeal - Procedure 43-07: 6
43-07-16	[Repealed]..... 43-07: 7
43-07-17	Revocation of license - Relicensing 43-07: 7
43-07-18	Penalty 43-07: 7
43-07-19	Nonresident contractors - Agent for service of process..... 43-07: 7
43-07-20	Employment preference in contract..... 43-07: 7
43-07-21	Penalty - Injunction proceedings 43-07: 8
43-07-22	Enforcement responsibility 43-07: 8
43-07-23	Allowable retention of estimates - Interest on retainage..... 43-07: 8
43-07-24	Duty to supply license number when applying for building permit - Display of number 43-07: 8
43-07-25	Licensed contractors' list..... 43-07: 8
43-07-26	Warranty repairs - Required notice 43-07: 8

CHAPTER 43-07 CONTRACTORS

43-07-01. Definitions. In this chapter, unless the context or subject matter otherwise requires:

1. "Contractor" means any person engaged in the business of construction, repair, alteration, dismantling, or demolition of bridges, highways, roads, streets, buildings, airports, dams, drainage or irrigation ditches, sewers, water or gas mains, water filters, tanks, towers, oil, gas, or water pipelines, and every other type of structure, project, development, or improvement coming within the definition of real or personal property, including the construction, alteration, or repair of property to be held either for sale or rental, and shall include subcontractor, public contractor, and nonresident contractor.
2. "Nonresident contractor" means any contractor who has not an established and maintained place of business within this state, or who has not made reports to North Dakota workforce safety and insurance within the previous year of employees within this state, and who has not made contributions to the North Dakota workforce safety and insurance fund accordingly, or who, during a like period has not made an income tax return in this state.
3. "Person" includes any individual, firm, copartnership, association, corporation, limited liability company, or other group or combination thereof acting as a unit, and the plural as well as the singular number, unless the intent to give a more limited meaning is disclosed clearly by the context thereof.
4. "Public contract" means a contract with the state of North Dakota or any board, commission, or department thereof, or with any board of county commissioners, or with any city council or board of city commissioners, board of township supervisors, school board, or with any state or municipal agency, or with any other public board, body, commission, or agency authorized to let or award contracts for the construction or reconstruction of public work when the contract cost, value, or price exceeds the sum of two thousand dollars and includes subcontracts undertaken to perform work covered by the original contract or any part thereof when the contract cost, value, or price of the work included in such subcontract exceeds the sum of two thousand dollars.
5. "Registrar" means the secretary of state of the state of North Dakota.

43-07-02. License required. A person may not engage in the business nor act in the capacity of a contractor within this state when the cost, value, or price per job exceeds the sum of two thousand dollars nor may that person maintain any claim, action, suit, or proceeding in any court of this state related to the person's business or capacity as a contractor without first having a license as provided in this chapter.

43-07-03. Registrar designated. The secretary of state as registrar has authority to employ such assistance and procure such records, supplies, and equipment as may be necessary to carry out the provisions of this chapter.

43-07-04. License - How obtained - Failure to grant - Revocation.

1. To obtain a license under this chapter, an applicant who is eighteen years of age or older shall submit, on forms the registrar prescribes, an application under oath containing a statement of the applicant's experience and qualifications as a contractor. A copy of a certificate of liability insurance must be filed with the application and the contractor shall submit a statement from North Dakota workforce safety and insurance that the contractor has secured workforce safety and insurance

coverage satisfactory to workforce safety and insurance. If the registrar deems it appropriate or necessary, the registrar may also require any other information to assist the registrar in determining the applicant's fitness to act in the capacity of a contractor, including, at the expense of the applicant, criminal history record information of the applicant or the officers, members, or partners of the applicant which is held or maintained by the bureau of criminal investigation or a similar entity in another state. The application must contain a statement that the applicant desires the issuance of a license under this chapter and must specify the class of license sought.

2. The registrar may refuse to grant a license if the registrar determines the application contains false, misleading, or incomplete information; the applicant fails or refuses to authorize or pay for criminal history information requested by the registrar; or as otherwise provided in sections 12.1-33-02.1 and 43-07-04.1. The registrar shall notify the applicant in writing if the registrar does not grant the license and shall provide the applicant an opportunity to respond to or cure the defect in the application for a period of ten days from the date of the written notification. An applicant aggrieved by a decision of the registrar not to grant the license may appeal the decision to the district court of the applicant's county of residence or Burleigh County.
3. No sooner than twenty days after sending written notice to a contractor at the contractor's last-known address, the registrar shall classify as not in good standing the license of any contractor who fails to:
 - a. Maintain liability insurance coverage required by this section or by section 43-07-10;
 - b. File, renew, or properly amend any fictitious name certificate required by chapter 45-11;
 - c. Maintain an active status of a corporation or registration as a foreign corporation;
 - d. Maintain an active status of a limited liability company or registration as a foreign limited liability company;
 - e. File or renew a trade name registration as required by chapter 47-25;
 - f. Maintain a limited liability partnership registration or foreign limited liability partnership registration as required by chapter 45-22; or
 - g. Maintain a limited partnership certificate of limited partnership or foreign limited partnership certificate of authority.
4. Any contractor who has been notified by the registrar that the contractor's license is not in good standing shall cease soliciting or entering new contract projects. If the contractor fails to correct the deficiency specified in the notice by evidence satisfactory to the registrar within thirty days of the date of the notice or if the contractor solicits or enters new contract projects while the contractor's license is not in good standing, the registrar shall use the procedures of chapter 28-32 to revoke the license of the contractor.

43-07-04.1. Conviction not bar to licensure - Exceptions. Conviction of an offense does not disqualify a person from licensure under this chapter unless the secretary of state determines that the offense has a direct bearing upon a person's ability to serve the public as a contractor or that, following conviction of any offense, the person is not sufficiently rehabilitated under section 12.1-33-02.1.

43-07-05. Classes of licenses. Four classes of licenses must be issued under this chapter, which must be designated as class A, B, C, and D licenses. The holders of such licenses are entitled to engage in the contracting business within this state subject to the following limitations:

1. The holder of a class A license is subject to no limitation as to the value of any single contract project.
2. The holder of a class B license is not entitled to engage in the construction of any single contract project of a value in excess of two hundred fifty thousand dollars.
3. The holder of a class C license is not entitled to engage in the construction of any single contract project of a value in excess of one hundred twenty thousand dollars.
4. The holder of a class D license is not entitled to engage in the construction of any single contract project of a value in excess of fifty thousand dollars.

43-07-06. Administrative and governing bodies may impose requirements. Any administrative body or governing body, agency, or commission having power to enter into public contracts may impose reasonable requirements and conditions as conditions precedent to the awarding of a contract for the construction or reconstruction of public works in addition to the requirements imposed by this chapter.

43-07-07. License fees. At the time of making application for a license as described and required in this chapter, the applicant shall pay to the registrar the following fees:

1. For a class A license, the sum of three hundred dollars.
2. For a class B license, the sum of two hundred dollars.
3. For a class C license, the sum of one hundred fifty dollars.
4. For a class D license, the sum of fifty dollars.

All moneys collected by the registrar under this chapter must be deposited by the registrar with the state treasurer, who shall credit them to the general fund of the state.

43-07-08. Exceptions. This chapter does not apply to:

1. Any authorized representative or representatives of the United States government, the state of North Dakota, or any county, municipality, irrigation district, reclamation district, or other political corporation.
2. Any person who furnishes any fabricated or finished product, material, or article of merchandise which is not incorporated into or attached to real property by such person so as to become affixed thereto.

43-07-09. Duty of registrar - Expiration of license. Within fifteen days from the date of application, the registrar may investigate and determine each applicant's fitness to act in the capacity of contractor as defined in this chapter, and no license may be issued to such applicant until the registrar receives all documentation necessary to obtain a license and the appropriate fee. The license issued on an original application entitles the licensee to act as a contractor within this state, subject to the limitations of such license, until the expiration of the then current fiscal year ending March first, except that an initial license issued to a licensee in January or February is valid until March first of the subsequent year.

43-07-09.1. Name changes. Not later than ten days after the date of a change in a contractor's name, the licensee must notify the registrar of the name change on a form provided by the registrar. A name change must be accompanied by a ten dollar fee. A licensee may not

change its name if the change is associated with a change in the legal status other than a change in marital status. A corporation, limited liability company, limited liability partnership, or limited partnership registered with the secretary of state is not subject to this section.

43-07-10. Renewal of license - Grounds for nonrenewal - Time requirements - Invalidity of license for failure to renew.

1. Any license issued under this chapter may be renewed for each successive fiscal year by obtaining from the registrar a certificate of renewal. To obtain a certificate of renewal, the licensee shall file with the registrar an application, which includes a listing of each project, contract, or subcontract completed by the licensee during the preceding calendar year in this state over the amount of twenty-five thousand dollars, the nature of the work of each project, contract, or subcontract, and, if a performance bond was required, the name and address of the person who issued the bond. The registrar shall within a reasonable time forward a copy of the list to the state tax commissioner. The applicant shall include with the application a copy of a certificate of liability insurance unless the registrar has a current valid certificate of insurance on file, and a certification that the applicant has submitted all payroll taxes, including North Dakota income tax, workforce safety and insurance premiums, and unemployment insurance premiums due at the time of renewal, which documents need not be notarized.
2. The registrar may refuse to renew a license if the registrar determines the application contains false, misleading, or incomplete information or if the contractor's license is not in good standing for any of the reasons listed in subsection 3 of section 43-07-04. The registrar shall notify the applicant in writing if the registrar does not grant the license and shall provide the applicant an opportunity to respond to or cure the defect in the application for a period of ten days from the date of the written notification. An applicant aggrieved by a decision of the registrar not to grant the license may appeal the decision to the district court of the applicant's county of residence or Burleigh County.
3. The application for a certificate of renewal must be made to the registrar on or before the first day of March of each year. At the time of filing the application for a certificate of renewal, the applicant shall pay to the registrar a renewal fee equal to twenty percent of the license fee established in section 43-07-07. If any contractor applies for a renewal under a class different from the license previously issued, the new class license may be issued upon the payment of the fee required for the issuance of the license of the class applied for. If any contractor fails to file an application for a certificate of renewal by the March first deadline, the contractor's license is not in good standing and the contractor must be deemed to be unlicensed within the meaning of sections 43-07-02 and 43-07-18. Within sixty days after March first, the contractor must be notified by mail that the contractor's license is not in good standing. The contractor then has until June first to renew by paying a penalty fee of seventy-five percent of the renewal fee, filing an application for a certificate of renewal, and paying the renewal fee. A contractor who applies for a certificate of renewal before or within ninety days of the filing deadline is not subject to the investigation authorized in section 43-07-09. After the June first deadline any licenses not renewed are revoked. Any application for a certificate of renewal must be fully completed within sixty days of the date the application is received by the registrar or the registrar shall return the application to the contractor who then is subject to section 43-07-09. The registrar may destroy all renewals provided for in this section after they have been on file for six years.

43-07-11. Contractor's bond - Requirements. Repealed by S.L. 1995, ch. 397, § 9.

43-07-11.1. Contracts with state.

1. No contractor, resident or nonresident, is eligible to enter into a public contract with any department of the state of North Dakota, nor any political or governmental subdivision of the state until satisfactory showing is made that said contractor has paid all delinquent income, sales or use taxes, if any, owed to the state pursuant to the provisions of the income, sales or use tax laws, and which have been assessed either by the filing of an income or sales and use tax return by the contractor, or by an assessment of additional income, sales or use taxes against the contractor by the commissioner that has become finally and irrevocably fixed, before the date that the contract was executed by the parties thereto. "Contractor" and "public contract" have the same definition for purposes of this section as in chapter 43-07 relating to issuance of licenses to contractors.
2. A certificate from and by the tax commissioner shall satisfy the requirement of subsection 1. Upon failure to file such a certificate, such department or political or governmental subdivision shall refuse to execute said public contract.
3. The provisions of this section apply only to contracts executed after July 1, 1965.

43-07-12. Bids to show license issued. All bids and proposals for the construction of any public contract project subject to the provisions of this chapter must contain a copy of the license or certificate of renewal thereof issued by the secretary of state enclosed in the required bid bond envelope. No contract may be awarded to any contractor unless the contractor is the holder of a license in the class within which the value of the project falls as hereinbefore provided. A contractor must be the holder of a license at least ten days prior to the date set for receiving bids, to be a qualified bidder. A bid submitted without this information properly enclosed in the bid bond envelope may not be read nor considered and must be returned to the bidder. This section does not apply to bids submitted:

1. To the department of transportation;
2. For use of municipal, rural, and industrial water supply funds authorized by Public Law No. 99-294 [100 Stat. 418];
3. To the public service commission; or
4. For use of federal aid highway funds authorized by Public Law No. 85-767 [72 Stat. 885; 23 U.S.C. 101 et seq.].

43-07-13. Records and certified copies thereof. The registrar shall maintain in the registrar's office, open to public inspection during office hours, a complete indexed record of all applications, licenses, certificates of renewal, revocations, and other information maintained on contractors. The registrar may dispose of an inactive contractor file after two years if no attempts have been made to apply for a new license or renew the license. Disposal of the license will proceed according to the provisions of chapter 54-46. Before disposal and upon request, the registrar shall furnish a certified copy of any information maintained upon receipt of the sum of ten dollars. Such certified copy must be received in all courts and elsewhere as prima facie evidence of the facts stated therein.

43-07-14. Complaint for license revocation - Consumer fraud action.

1. Any person may file a duly verified complaint with the registrar charging that the licensee is guilty of any of the following acts or omissions:
 - a. Abandonment of any contract without legal excuse after a deposit of money or other consideration has been provided to the licensee. A rebuttable presumption of abandonment arises if:

- (1) A contractor fails substantially to commence any work agreed upon, unless the failure is due to circumstances beyond the control of the contractor:
 - (a) Within sixty days of a starting date agreed upon in writing; or
 - (b) Within ninety days of the contract date if no starting date is agreed upon in writing; or
 - (2) A contractor fails to complete any work agreed upon in writing within ninety days of a completion date agreed upon in writing, or within one hundred eighty days of the contract date if no completion date is agreed upon in writing, unless the failure is due to circumstances beyond the control of the contractor.
- b. Diversion of funds or property received under express agreement for the prosecution or completion of a specific contract under this chapter, or for a specified purpose in the prosecution or completion of any contract, and their application or use for any other contract obligation or purpose to defraud or deceive creditors or the owner.
 - c. Engaging in any fraudulent or deceptive acts or practices or misrepresentation as a contractor in consequence of which one or more persons is injured in a total amount exceeding three thousand dollars.
 - d. The making of any false or misleading statement in any application for a license or renewal or by violating this chapter or being convicted of an offense the registrar determines has a direct bearing on the applicant's or licensee's ability to serve the public as a contractor as set out in section 12.1-33-02.1.
 - e. Engaging in work without any trade or professional license as required for the work pursuant to local, state, or federal law.
 - f. Failure to refund fully the contracting party's advance payment if a rebuttable presumption of abandonment has arisen and the contracting party has made a request to the licensee for a refund.
2. The complaint must be on a form approved by the registrar and must set forth sufficient facts upon which a reasonable individual could conclude that any of the acts or omissions in subsection 1 has been committed.
 3. Any act or omission under this section may also constitute grounds for the attorney general to bring an action under chapter 51-15 against the licensee or any unlicensed person engaging in the business or acting in the capacity of a contractor in violation of section 43-07-02 and subjects the licensee or any such unlicensed person to all provisions, procedures, remedies, and penalties provided for in chapter 51-15.

43-07-15. Revocation or suspension of license - Restitution - Civil penalties - Appeal - Procedure. The registrar shall review each complaint filed under section 43-07-14. If the registrar determines a written complaint filed under section 43-07-14 provides sufficient facts upon which a reasonable person could conclude that one or more of the acts or omissions set forth in section 43-07-14 has been committed, the registrar may initiate an adjudicative proceeding in accordance with chapter 28-32. If, after an adjudicative proceeding or as part of an informal disposition under chapter 28-32, the registrar determines that the licensee is guilty of an act or omission charged or if the licensee admits guilt to an act or omission charged, the registrar may suspend or revoke the contractor's license, order a civil penalty of not more than one thousand dollars, order restitution in an amount not more than five thousand dollars, or impose some lesser sanction or remedy. The registrar may suspend the contractor's license for a period

of not more than sixty months. The registrar may not renew, reinstate, or issue a new license until the licensee has paid any civil penalty or restitution imposed under this section. The registrar may bring an action in district court to recover restitution or penalties under this section. A contractor aggrieved by a decision of the registrar in revoking or suspending the contractor's license or ordering restitution or penalties may appeal the decision to the district court of that person's county of residence or Burleigh County. Any licensee may not obtain a license under any name during the period of revocation or suspension. A "licensee" whose license is revoked or suspended includes any officer, director, agent, member, or employee of the licensee. The provisions of chapter 28-32 govern any appeal and proceedings hereunder.

43-07-16. Cancellation of license - Appeal. Repealed by S.L. 1963, ch. 304, § 16.

43-07-17. Revocation of license - Relicensing. A licensee whose license has been revoked may not be relicensed for a period of up to five years.

43-07-18. Penalty. Any person acting in the capacity of a contractor without a license is guilty of a class A misdemeanor. Whether a person is subjected to criminal prosecution under this section, and in addition to the license fee that may be assessed when the person applies for a license, the person may be assessed a civil penalty by the registrar, following written notice to the person of an intent to assess the penalty, in an amount not to exceed three times the amount set forth in section 43-07-07. Any civil penalty must be assessed and collected before a person is issued a license. The assessment of a civil penalty may be appealed in the same manner as appeals under section 43-07-04, but only on the basis that the registrar's administrative determination that the person acted as a contractor when not licensed as a contractor was clearly erroneous.

43-07-19. Nonresident contractors - Agent for service of process. Every applicant for a contractor's license who is not a resident of the state of North Dakota, by signing and filing the application, appoints the secretary of state as the applicant's true and lawful agent upon whom may be served all lawful process in any action or proceeding against such nonresident contractor. Such appointment in writing is evidence of the contractor's consent that any such process against the contractor which is so served upon the secretary of state shall be of the same legal force and effect as if served upon the contractor personally within this state. Registered foreign corporations entitled to do business in this state according to chapter 10-19.1, registered foreign limited liability companies entitled to do business in the state according to chapter 10-32, foreign limited liability partnerships entitled to do business in the state according to chapter 45-22, and foreign limited partnerships entitled to do business in the state according to chapter 45-10.2 and having a current registered agent and registered address on file in the secretary of state's office need not appoint the secretary of state as agent for service of process under this section. Within ten days after service of the summons upon the secretary of state, notice of such service with the summons and complaint in the action shall be sent to the defendant contractor at the defendant contractor's last-known address by registered or certified mail with return receipt requested and proof of such mailing shall be attached to the summons. The secretary of state shall keep a record of all process served upon the secretary of state under this section, showing the day and hour of service. Whenever service of process was made under this section, the court, before entering a default judgment, or at any stage of the proceeding, may order such continuance as may be necessary to afford the defendant contractor reasonable opportunity to defend any action pending against the defendant contractor.

43-07-20. Employment preference in contract. In all contracts, except those which involve federal-aid funds and when a preference or discrimination would be contrary to a federal law or regulation, hereafter let for state, county, city, school district, or township construction, repair, or maintenance work under any laws of this state, there shall be inserted a provision by which the contractor must give preference to the employment of bona fide North Dakota residents, as determined by section 54-01-26, with preference given first to honorably discharged disabled veterans and veterans of the armed forces of the United States, as defined in section 37-19.1-01, who are deemed to be qualified in the performance of that work. The preference shall not apply to engineering, superintendence, management, or office or clerical work.

No contract shall be let to any person, firm, association, cooperative, corporation, or limited liability company refusing to execute an agreement containing the aforementioned provisions.

43-07-21. Penalty - Injunction proceedings. Any person violating any provisions of section 43-07-20 is guilty of a class B misdemeanor. A repeated violation constitutes legal grounds for a court, on proper application by the labor commissioner, to grant an injunction without requiring the posting of a bond or undertaking.

43-07-22. Enforcement responsibility. The labor commissioner has the primary responsibility of enforcing sections 43-07-20 and 43-07-21 and may make reciprocal agreements or arrangements with any other state or territory exempting the application of sections 43-07-20 through 43-07-22, and may examine records of employment relative to public contracts for such purposes. However, any person being adversely affected because of noncompliance with section 43-07-20 may also institute an appropriate civil action, and any person having knowledge of a violation may file a criminal complaint with the proper official.

43-07-23. Allowable retention of estimates - Interest on retainage. Contracts entered between persons for the performance of work to be done by a contractor, except those contracts subject to section 40-22-37 or 48-01.2-13, or contracts governed by federal statutes or regulations which require other provisions with respect to retention, are subject to a maximum retention on amounts due under the contract as follows: retention of ten percent of each estimate presented is allowable until such time as the project is fifty percent complete, with no further retainage on estimates during the continuance of the contract. If the owner, governing board, or authorized committee invests the retained estimate funds, the interest earned on those retained funds is payable at the time of final payment on the contract to the contractor on whose account the moneys were held.

43-07-24. Duty to supply license number when applying for building permit - Display of number. When applying for a building permit, a contractor shall supply the permit issuing official that contractor's license number. That official shall enter those numbers on the permit. A person performing general contractor's work on that person's own property, even if exempt from the licensing requirements of this chapter, shall, when applying for a building permit, supply the building permit issuing official the license number, as soon as available, of each subcontractor engaged on the project and doing work covered by the permit. That official shall enter each number so supplied before inspection of the work.

43-07-25. Licensed contractors' list. On request, the registrar shall provide city and county enforcement officials with a list of contractors licensed under this chapter. The registrar shall also provide similar information to persons governed by section 43-07-24. Whenever the registrar obtains information on the activities of a contractor doing business in this state of which officials of workforce safety and insurance, job service North Dakota, or tax commissioner may be unaware and that may be relevant to the duties of those officials, the registrar shall provide any relevant information to those officials for the purpose of administering their duties.

43-07-26. Warranty repairs - Required notice. Before undertaking any repair, other than emergency repair, or instituting any action for breach of warranty in the construction of a one-family or two-family dwelling, or an improvement with a value exceeding two thousand dollars to a dwelling, the purchaser or owner shall give the contractor written notice by mail, within six months after knowledge of the defect, advising the contractor of any defect and giving the contractor a reasonable time to comply with this section. Within a reasonable time after receiving the notice, the contractor shall inspect the defect and provide a response to the purchaser or owner, and, if appropriate, remedy the defect within a reasonable time thereafter. The contractor shall provide the purchaser or owner written notice of the requirements of this section at the time of closing for the property or, in the case of an improvement, at the time of completion of the improvement. For the purposes of this section, "reasonable time" means within thirty business days after the notice is mailed or any shorter period of time as may be appropriate under the circumstances.

CHAPTER 43-35

STATE BOARD OF WATER WELL CONTRACTORS

<u>Section</u>	<u>Page</u>
43-35-01 Declaration of policy.....	43-35: 1
43-35-02 Definitions	43-35: 1
43-35-03 State board of water well contractors - Members' appointment - Qualification.....	43-35: 1
43-35-04 Appointive members to qualify - Terms of office - Filling vacancy....	43-35: 1
43-35-05 Officers - Office	43-35: 1
43-35-06 Secretary-treasurer bond	43-35: 1
43-35-07 Compensation and reimbursement of expenses	43-35: 2
43-35-08 Office, administrative, and technical personnel - Compensation.....	43-35: 2
43-35-09 Deposit of fees - Use and appropriation of funds	43-35: 2
43-35-10 Powers and duties of board	43-35: 2
43-35-11 Certificate required	43-35: 2
43-35-11.1 Conviction not bar to certification - Exceptions.....	43-35: 2
43-35-12 Examination - When held - Notice.....	43-35: 2
43-35-13 Certificate - How obtained - Fee - Bond	43-35: 2
43-35-14 Bond required.....	43-35: 3
43-35-15 Certification of persons previously engaged in contracting	43-35: 3
43-35-15.1 Certification of persons engaged in installation of water well pumps and pitless units prior to certification requirement.....	43-35: 3
43-35-15.2 Certification of persons engaged in monitoring well contracting prior to certification requirement	43-35: 3
43-35-15.3 Certificate of persons engaged in drilling of geothermal systems before certification requirement	43-35: 4
43-35-16 Display of certification	43-35: 4
43-35-17 Renewal of certificate - Continuing education	43-35: 4
43-35-18 Firm engaged in water well work to employ certified water well contractor - Exception.....	43-35: 4
43-35-18.1 Firm engaged in installation of water well pump and pitless units to employ certified installer - Exception	43-35: 4
43-35-18.2 Firm engaged in monitoring well work to employ certified monitoring well contractor - Exception	43-35: 4
43-35-18.3 Firm engaged in drilling of geothermal systems to employ certified driller - Exception	43-35: 4
43-35-19 Standards for well drilling - Reports required	43-35: 4
43-35-19.1 Standards for installation of water well pumps and pitless units.....	43-35: 5
43-35-19.2 Standards for installation of monitoring wells - Reports required	43-35: 5
43-35-19.3 Standards for drilling of geothermal systems	43-35: 5
43-35-20 Revocation or suspension of certificate - Grounds for - How reinstated.....	43-35: 5
43-35-21 Certification to nonresidents - Reciprocity	43-35: 5
43-35-22 Contracting without certification - Penalty	43-35: 5
43-35-23 Continuing education - Preapproval requirements	43-35: 5

CHAPTER 43-35

STATE BOARD OF WATER WELL CONTRACTORS

43-35-01. Declaration of policy. The business or activity of constructing water wells is declared to be an industry affecting the public welfare, health, and safety of all the people of North Dakota and requires the exercise of the sovereign powers of the state for a public purpose, and it hereby is declared necessary that a state board of water well contractors be established, which in the exercise of its powers must be deemed to be an administrative agency within the purview of chapter 28-32.

43-35-02. Definitions. As used in this chapter, unless the context or subject matter otherwise requires:

1. "Board" means the North Dakota board of water well contractors.
2. "Constructing" a well includes boring, digging, drilling, or excavating and installing casings, well screens, and other appurtenances.
3. "Drilling" means making any opening in the earth's surface by drilling, boring, or otherwise, and includes inserting any object into any part of the earth's surface for the purpose of obtaining an underground water supply except drainage tiles or similar devices designed primarily to improve land by removing excess water.
4. "Water well contractor" means any person who is certified to conduct the business of well drilling under the provisions of this chapter.
5. "Well" means any artificial opening or artificially altered natural opening, however made, by which ground water is sought, including test holes drilled for the purpose of exploration for and development of ground water, or through which ground water flows under natural pressure or is artificially withdrawn, provided that this definition does not include a natural spring, stock ponds, or holes drilled for the purpose of exploration for production of oil, gas, gravel, or other minerals.

43-35-03. State board of water well contractors - Members' appointment - Qualification. The state board of water well contractors consists of the state engineer and the state health officer, or their duly authorized designees, two water well contractors appointed by the governor, one geothermal system driller appointed by the governor, one water well pump and pitless unit installer appointed by the governor, and one member appointed at large by the governor.

43-35-04. Appointive members to qualify - Terms of office - Filling vacancy. Each appointive member to the board shall qualify by taking the oath of office required of civil officers and shall hold office for a term of four years or until a successor is appointed and qualified, except that the initial appointments must be for terms of two and four years, respectively, and expire on June thirtieth of the respective years. A vacancy on the board must be filled for the unexpired term in the same manner as was the member whose office is vacant.

43-35-05. Officers - Office. The members of the board shall meet annually on the second Monday in July at a time and place designated by the president, except that the first meeting must be held in the office of the state engineer at ten a.m., to select from their number a president, vice president, and a secretary-treasurer. The secretary-treasurer need not be a member of the board. Additional board meetings may be provided for in the bylaws or rules and regulations adopted by the board.

43-35-06. Secretary-treasurer bond. Promptly upon assuming the office, the secretary-treasurer shall furnish a bond satisfactory to the board for the faithful performance and discharge of the secretary-treasurer's duties in an amount determined by the board, the premium for which is to be paid from board funds.

43-35-07. Compensation and reimbursement of expenses. Each appointive member of the board is entitled to receive sixty-two dollars and fifty cents compensation per day and must be reimbursed for expenses in the same amounts as provided for in sections 44-08-04 and 54-06-09 while attending board meetings or otherwise engaged in the official business of the board.

43-35-08. Office, administrative, and technical personnel - Compensation. The board may employ such office, administrative, and technical personnel as it deems necessary and shall fix their compensation and prescribe their duties. It may retain legal counsel and incur such other expenses as and when deemed necessary to carry out the provisions of this chapter.

43-35-09. Deposit of fees - Use and appropriation of funds. All fees received by the treasurer under this chapter must be deposited to the credit of the board in the Bank of North Dakota and disbursed only on order of the president and secretary-treasurer. Funds collected for certifying and inspections may be expended in such manner as the board deems necessary to best carry out the provisions of this chapter. All funds accruing to the credit of the state board of water well contractors are hereby permanently appropriated to the board for the purpose of this chapter.

43-35-10. Powers and duties of board. The board has the power and it is its duty:

1. To effectively administer and carry out the provisions of this chapter.
2. To adopt bylaws, rules, and regulations for the conduct of the business affairs of the board and administration of its functions.

43-35-11. Certificate required. A person, partnership, firm, corporation, or limited liability company may not engage in the business of water well contracting or water well pump and pitless unit installation, monitoring well contracting, or geothermal system drilling unless certified to do so by the board of water well contractors.

43-35-11.1. Conviction not bar to certification - Exceptions. Conviction of an offense does not disqualify a person from certification under this chapter unless the board determines that the offense has a direct bearing upon a person's ability to serve the public as a water well contractor, or that, following conviction of any offense, the person is not sufficiently rehabilitated under section 12.1-33-02.1.

43-35-12. Examination - When held - Notice. The board shall hold meetings at such times and such places as it shall designate for the purpose of administering an examination to those persons desiring to become certified as water well contractors, water well pump and pitless unit installers, monitoring well contractors, or geothermal system drillers. The board shall give no less than ten days' written notice to each applicant of the time and place of such examination. The board shall develop separate examinations for the certification of water well contractors, water well pump and pitless unit installers, monitoring well contractors, and geothermal system drillers.

43-35-13. Certificate - How obtained - Fee - Bond.

1. Any person who takes the examination to become a certified water well contractor must first complete a minimum of one-year apprenticeship or experience in water well drilling and construction under the direct supervision of a certified water well contractor or have completed a career and technical education program of at least one year in water well construction and shall make application to the board.
2. Any person who takes the examination to become a certified water well pump and pitless unit installer must first complete a minimum of one-year apprenticeship or experience in water well pump and pitless unit installation under the direct supervision of a certified water well pump and pitless unit installer or have completed

a career and technical education program of at least one year in water well pump and pitless unit installation.

3. Any person who takes the examination to become a certified monitoring well contractor must first complete a minimum of one-year apprenticeship or experience in monitoring well construction under the direct supervision of a certified water well contractor or a certified monitoring well contractor or have completed a career and technical education program of at least one year in water well construction or hold a bachelor's degree in engineering or geology from an approved school and shall make application to the board.
4. Any person who takes the examination to become a certified geothermal system driller must first complete either a minimum of one year of apprenticeship under the direct supervision of a certified geothermal system driller or have a minimum of two thousand forty installation hours of experience in geothermal system drilling working under the direct supervision of a certified geothermal system driller, or, in the alternative, must first complete career and technical education relating to geothermal system drilling lasting at least one school year.
5. A person applying to take a certification examination shall pay to the board treasurer a nonrefundable examination fee in the amount of ten dollars. If upon examination the applicant is found to be qualified as a water well contractor, a water well pump and pitless unit installer, a monitoring well contractor, or a geothermal system driller, the board shall issue to that person an appropriate certificate upon the applicant's executing and filing with the board a bond as required in this chapter. The board may offer a combined examination for certification of a person as a water well contractor and a water well pump and pitless unit installer and may issue a single certificate for successful completion of the combined examination. Certificates issued under this chapter are not transferable.

43-35-14. Bond required. Before receiving a certificate under this chapter, a qualified applicant shall execute and deposit with the board a surety bond in the amount of two thousand dollars conditioned for the faithful performance of all water well, monitoring well, pump and pitless unit, or geothermal system installation contracts undertaken by the applicant and the strict compliance with this chapter.

43-35-15. Certification of persons previously engaged in contracting. Upon application and sworn affidavit and the payment of a registration fee in the amount of twenty dollars, the board shall issue a certificate, without an examination, to any person who has been engaged in the business of a water well contractor as an occupation for at least one year prior to July 1, 1971.

43-35-15.1. Certification of persons engaged in installation of water well pumps and pitless units prior to certification requirement. Upon application and sworn affidavit and the payment of a registration fee of not more than fifty dollars, as set by the board, the board shall issue an appropriate certificate, without examination, to any person who has been engaged in the business of water well pump and pitless unit installation as an occupation for at least one year prior to July 1, 1985, if the application is made prior to July 1, 1986. A person certified as a water well contractor under this chapter before July 1, 1985, is deemed to be properly certified as a water well pump and pitless unit installer under this chapter subject to the renewal provisions of section 43-35-17 and is not required to apply for and receive a separate certificate under this section.

43-35-15.2. Certification of persons engaged in monitoring well contracting prior to certification requirement. Upon application and sworn affidavit and the payment of a registration fee of not more than fifty dollars, as set by the board, the board shall issue an appropriate certificate, without examination, to any person who has been engaged in the business of monitoring well contracting as an occupation for at least one year prior to July 1, 1987, if the application is made prior to July 1, 1988. A person certified as a water well

contractor under this chapter before July 1, 1987, is deemed to be properly certified as a monitoring well contractor under this chapter subject to the renewal provisions of section 43-35-17 and is not required to apply for and receive a separate certificate under this section.

43-35-15.3. Certification of persons engaged in drilling of geothermal systems before certification requirement. Upon application and sworn affidavit and the payment of a registration fee of not more than fifty dollars, as set by the board, the board shall issue an appropriate certificate, without examination, to any person who has been engaged in the business of geothermal system drilling as an occupation for at least one year before July 1, 2007, if the application is made before July 1, 2008.

43-35-16. Display of certification. The board shall furnish each certified water well contractor a decal for each drill rig the contractor owns or leases. Such decal must be displayed in a conspicuous place on the drill rig.

43-35-17. Renewal of certificate - Continuing education. A certificate issued under this chapter is valid for up to one year and expires on the thirty-first day of December in the year of issuance. The certificate may be renewed by the board upon application. Every two years the application must include reporting information that the applicant completed six hours of continuing education during the two-year reporting cycle which meets continuing education standards adopted by the board. The application must be made before April first in the year following the certificate's expiration, must be accompanied by a fee in an amount set by the board not to exceed fifty dollars, and must be accompanied by a bond as provided in section 43-35-14.

43-35-18. Firm engaged in water well work to employ certified water well contractor - Exception. No person, partnership, association, corporation, or limited liability company shall engage in the business of constructing a water well in this state unless at all times a certified water well contractor, who is responsible for the proper construction or alteration thereof, is in charge; provided, however, that nothing in this chapter shall be construed so as to prohibit any person, partnership, association, corporation, or limited liability company from constructing any water well on the person's or entity's own premises for the person's or entity's own use.

43-35-18.1. Firm engaged in installation of water well pump and pitless units to employ certified installer - Exception. No person may engage in the business of installing water well pumps and pitless units in the state after July 1, 1986, unless a certified installer, who is responsible for the proper installation of the pump and pitless unit, is in charge of the installation. This chapter does not prohibit any person from installing water well pumps and pitless units on that person's own premises for that person's own use.

43-35-18.2. Firm engaged in monitoring well work to employ certified monitoring well contractor - Exception. No person may engage in the business of constructing a monitoring well in this state unless at all times a certified monitoring well contractor, who is responsible for the proper construction or alteration thereof, is in charge. This section does not prohibit any person from installing monitoring wells on that person's own premises for that person's own use.

43-35-18.3. Firm engaged in drilling of geothermal systems to employ certified driller - Exception. A person may not engage in the business of drilling geothermal systems in the state after July 1, 2008, unless a certified driller, who is responsible for the proper drilling of the geothermal system, is in charge of the drilling. This chapter does not prohibit a person from drilling geothermal systems on that person's own premises for that person's own use.

43-35-19. Standards for well drilling - Reports required. All construction of water wells must comply with the rules adopted by the state department of health. Within thirty days after the completion of each well, each water well contractor shall furnish to the board on forms provided by the board such information as the state department of health shall require, including a log of formations penetrated, well depth, and casing size and weight. A copy of each report

must also be furnished to the customer. All information submitted must remain the property of the board.

43-35-19.1. Standards for installation of water well pumps and pitless units. All installation of water well pumps and pitless units must comply with the rules adopted by the state department of health and the board.

43-35-19.2. Standards for installation of monitoring wells - Reports required. All monitoring wells constructed must comply with the rules adopted by the state department of health and the board. Each monitoring well contractor shall furnish all reports required by the rules of the state department of health or the board.

43-35-19.3. Standards for drilling of geothermal systems. All drilling of geothermal systems must comply with the rules adopted by the state geologist and the board.

43-35-20. Revocation or suspension of certificate - Grounds for - How reinstated. The board may suspend or revoke any certificate issued under the provisions of this chapter if the holder is found guilty by the board of any violation of the rules adopted by the state department of health or the board after a hearing duly held substantially in conformance with chapter 28-32. Six months after any certificate has been revoked, an application may be made for another certificate in the same manner as a new certificate is obtained.

43-35-21. Certification to nonresidents - Reciprocity. To the extent other states providing for the certification of water well contractors, monitoring well contractors, water well pump and pitless unit installers, or geothermal system drillers provide for similar action, the board may grant certification to water well contractors, monitoring well contractors, water well pump and pitless unit installers, and geothermal system drillers certified by other states, upon payment by the applicant of the required fee and the furnishing of a bond as provided by section 43-35-14, after being furnished with proof that the qualifications of the applicant are equal to the qualifications of holders of such certificates in this state.

43-35-22. Contracting without certification - Penalty. Any person contracting to drill a water well or monitoring well, drill a pump or pitless unit, or drill a geothermal system for another without being certified in accordance with this chapter, or otherwise violating this chapter, is guilty of an infraction.

43-35-23. Continuing education - Preapproval requirements. Each certificate holder shall earn at least six hours of board-approved continuing education during every two-year reporting cycle to qualify for certificate renewal, except a new certificate holder is not required to earn continuing education until the second renewal year following initial certification. Continuing education coursework may be provided by the national ground water association, the North Dakota well drillers association, incorporated, a board-sponsored workshop, the state department of health, the state water commission, or by any board-approved course provider. A continuing education course must be preapproved by the board unless otherwise provided under this section. A continuing education course provider or a certificate holder shall request preapproval of continuing education coursework by submitting to the board a course outline, the instructor's name, the length of the training, and an explanation of how the training relates to the construction and service of water wells. A certificate holder may request approval of education that was not preapproved by submitting to the board verification of attendance, a course outline, and an explanation of why preapproval was not obtained. The board shall determine on a case-by-case basis whether to approve education that was not preapproved.

**CHAPTER 44-08
MISCELLANEOUS PROVISIONS**

<u>Section</u>		<u>Page</u>
44-08-01	Preference to North Dakota bidders, sellers, and contractors	44-08: 1
44-08-01.1	Bids to be sealed - Designation of time and place for opening - Preference for tie bids	44-08: 1
44-08-02	Resident North Dakota bidder, seller, and contractor defined	44-08: 1
44-08-03	Traveling expenses - What allowed	44-08: 1
44-08-04	Expense account - Amount allowed - Verification	44-08: 2

CHAPTER 44-08 MISCELLANEOUS PROVISIONS

44-08-01. Preference to North Dakota bidders, sellers, and contractors.

1. The office of management and budget, any other state entity, and the governing body of any political subdivision of the state in purchasing any goods, merchandise, supplies, or equipment of any kind, or contracting to build or repair any building, structure, road, or other real property, shall give preference to bidders, sellers, or contractors resident in North Dakota. The preference must be equal to the preference given or required by the state of the nonresident bidder, seller, or contractor.
2. A state entity authorized to accept bids shall give preference to a resident North Dakota bidder when accepting bids for the provision of professional services, including research and consulting services. The preference must be equal to the preference given or required by the state of the nonresident bidder.
3. The office of management and budget, any other state entity, and the governing body of any political subdivision of the state in specifying or purchasing any goods, merchandise, supplies, or equipment, may not specify any trademarked or copyrighted brand or name, nor the product of any one manufacturer, nor any patented product, apparatus, device, or equipment, when the same will prevent proper competition, unless bidders also are asked for bids or offers upon other articles of like nature, utility, and merit. When it is advantageous that the purchase be of a particular brand of product or products of a particular manufacturer to the exclusion of competitive brands or manufacturers, the purchasing board or entity must document those circumstances and provide written justification for the proprietary specification or purchase. The purchasing board or entity shall procure the proprietary product through a competitive process unless the needed product is available exclusively from one source of supply or other circumstances exist under which competition can be waived.

44-08-01.1. Bids to be sealed - Designation of time and place for opening - Preference for tie bids. Notwithstanding any other provisions of the North Dakota Century Code, the governing bodies of the political subdivisions of the state of North Dakota shall accept only sealed bids, whenever by law or administrative decision they are required to call for, advertise, or solicit bids for the purchase of personal property and equipment. Whenever a political subdivision of this state calls for, advertises, or solicits sealed bids, it shall designate a time and place for the opening of such bids. If all of the bids are not rejected, the purchase must be made from the bidder submitting the lowest and best bid meeting or exceeding the specifications set out in the invitation for bids. In the event that two or more bids contain identical pricing or receive identical evaluation scores, preference must be given to bids submitted by North Dakota vendors.

44-08-02. Resident North Dakota bidder, seller, and contractor defined. The term "a resident North Dakota bidder, seller, or contractor" when used in section 44-08-01, unless the context thereof clearly provides otherwise, means a bidder, seller, or contractor who has maintained a bona fide place of business within this state for at least one year prior to the date on which a contract was awarded.

44-08-03. Traveling expenses - What allowed. No elective or appointive officer, employee, representative, or agent of this state, or of any of its subdivisions, agencies, bureaus, boards, or commissions, may willfully make claim upon, or willfully receive, any public funds for traveling expenses, while engaged upon public business, in an amount in excess of that allowed by law for such travel. If more than one public officer, employee, representative, or agent travels in the same car while engaged upon official duty, whether belonging to different departments,

subdivisions, boards, or commissions or not, no claim may be made for more than one mileage, such claim to be made by the owner or lessee of such car.

44-08-04. Expense account - Amount allowed - Verification.

1. Except as provided in section 44-08-04.1, each elective or appointive officer, employee, representative, or agent of this state, or of any of its subdivisions, agencies, bureaus, boards, or commissions, may make claim for meals and lodging while engaged in the discharge of a public duty away from the claimant's normal working and living residence for all or any part of any quarter of a day. Claims may also be made for meals that are included as part of a registration fee for a conference, seminar, or other meeting and for meals attended at the request of and on behalf of the state or any of its subdivisions, agencies, bureaus, boards, or commissions; however, if a meal is included in a registration fee, the applicable quarter allowance cannot be claimed for that meal. Claims for meals specifically included in a registration fee for a conference, seminar, or other meeting must be allowed even if the city at which the conference, seminar, or meeting is held or the meal is provided is the claimant's normal working and living residence. Reimbursement is allowed only for overnight travel or other travel, away from the normal place of employment, for four hours or more. Verification of expenses by receipt is required only for lodging expenses.
2. For travel within the state, the following rates for each quarter of any twenty-four-hour period must be used:
 - a. First quarter is from six a.m. to twelve noon and the sum must be five dollars. First quarter reimbursement may not be made if travel began after seven a.m.
 - b. Second quarter is from twelve noon to six p.m. and the sum must be seven dollars and fifty cents.
 - c. Third quarter is from six p.m. to twelve midnight and the sum must be twelve dollars and fifty cents.
 - d. Fourth quarter is from twelve midnight to six a.m. and the sum must be the actual lodging expenses not to exceed fifty-five dollars plus any additional applicable state or local taxes. A political subdivision may reimburse an elective or appointive officer, employee, representative, or agent for actual lodging expenses.
3. The allowance for out-of-state meals, within the continental United States, is equal to the per diem meals rate in the city for which a claim is made on that day as established by rule for federal employees by the United States general services administration and must be allocated twenty percent to the first quarter, thirty percent to the second quarter, and fifty percent to the third quarter.
4. The allowance for meals in noncontinental United States and overseas nonforeign areas, including Alaska, Hawaii, and Guam, is equal to the per diem meals rate in the city for which a claim is made on that day as established by rule for federal employees established by the United States per diem committee.
5. The allowance for meals outside the United States is equal to the per diem meals rate in the city for which a claim is made on that day as established by rule for federal employees established by the United States department of state.
6. The allowance for lodging outside the state must be the actual lodging expense.
7. A department, institution, or agency of this state may set a rate for travel expenses outside the state less than those set forth in this section. Verification of any other

type of expense not prescribed by this section must be as prescribed by the office of the budget except no receipt may be required for taxi or cab fares of ten dollars or less. The office of management and budget shall disapprove any claim it determines to be in error or unlawful or not within the limits of legislative appropriations.

CHAPTER 47-01

GENERAL PROVISIONS

47-01-15. Banks and beds of streams - Boundary of ownership. Except when the grant under which the land is held indicates a different intent, the owner of the upland, when it borders on a navigable lake or stream, takes to the edge of the lake or stream at low watermark. All navigable rivers shall remain and be deemed public highways. In all cases when the opposite banks of any stream not navigable belong to different persons, the stream and the bed thereof shall become common to both.

CHAPTER 47-05
SERVITUDES

<u>Section</u>		<u>Page</u>
47-05-01	Easements attached to other lands.....	47-05: 1
47-05-02	Servitudes not attached to land.....	47-05: 1
47-05-02.1	Requirements of easements, servitudes, or nonappurtenant restrictions on the use of real property.....	47-05: 2

CHAPTER 47-05

SERVITUDES

47-05-01. Easements attached to other lands. The following land burdens or servitudes upon lands may be attached to other land as incidents or appurtenances and then are called easements:

1. The right of pasturage.
2. The right of fishing.
3. The right of taking game.
4. The right of way.
5. The right of taking water, wood, minerals, and other things.
6. The right of transacting business upon land.
7. The right of conducting lawful sports upon land.
8. The right of receiving air, light, or heat from or over, or discharging the same upon or over land.
9. The right of receiving water from or discharging the same upon land.
10. The right of flooding land.
11. The right of having water flow without diminution or disturbance of any kind.
12. The right of using a wall as a party wall.
13. The right of receiving more than natural support from adjacent land or things affixed thereto.
14. The right of having the whole of a division fence maintained by a coterminous owner.
15. The right of having public conveyances stopped or of stopping the same on land.
16. The right of a seat in church.
17. The right of burial.

47-05-02. Servitudes not attached to land. The following land burdens or servitudes upon land may be granted and held, though not attached to land:

1. The right to pasture, and of fishing and taking game.
2. The right of a seat in church.
3. The right of burial.
4. The right of taking rents and tolls.
5. The right of way.
6. The right of taking water, wood, minerals, or other things.
7. A historic easement granted with respect to a state historic site and buildings and structures thereon, or property listed in the national register of historic places, in accordance with the provisions of section 55-10-08.

47-05-02.1. Requirements of easements, servitudes, or nonappurtenant restrictions on the use of real property. Real property easements, servitudes, or any nonappurtenant restrictions on the use of real property, which become binding after July 1, 1977, shall be subject to the requirements of this section. These requirements are deemed a part of any agreement for such interests in real property whether or not printed in a document of agreement.

1. The area of land covered by the easement, servitude, or nonappurtenant restriction on the use of real property shall be properly described and shall set out the area of land covered by the interest in real property.
2. The duration of the easement, servitude, or nonappurtenant restriction on the use of real property must be specifically set out, and in no case may the duration of any interest in real property regulated by this section exceed ninety-nine years. The duration of an easement for a waterfowl production area acquired by the federal government, and consented to by the governor or the appropriate state agency after July 1, 1985, may not exceed fifty years. The duration of a wetlands reserve program easement acquired by the federal government pursuant to the Food, Agriculture, Conservation, and Trade Act of 1990 after July 1, 1991, may not exceed thirty years.
3. No increase in the area of real property subject to the easement, servitude, or nonappurtenant restriction shall be made except by negotiation between the owner of the easement, servitude, or nonappurtenant restriction and the owner of the servient tenement.

CHAPTER 47-06
REAL ESTATE TITLE BY OCCUPANCY AND ACCESSION

<u>Section</u>		<u>Page</u>
47-06-05	Riparian accretions	47-06: 1
47-06-06	Avulsion - Title - Reclamation by original owner - Limitations	47-06: 1
47-06-07	Ancient streambed taken by owners of new course as indemnity	47-06: 1
47-06-08	Islands and relicted lands in navigable streams belong to state	47-06: 1
47-06-09	Islands and relicted land in nonnavigable streams.....	47-06: 1
47-06-10	Island formed by dividing stream - Title.....	47-06: 1

CHAPTER 47-06

REAL ESTATE TITLE BY OCCUPANCY AND ACCESSION

47-06-05. Riparian accretions. Where from natural causes land forms by imperceptible degrees upon the bank of a river or stream, navigable or not navigable, either by accumulation of material or by the recession of the stream, such land belongs to the owner of the bank, subject to any existing right of way over the bank.

47-06-06. Avulsion - Title - Reclamation by original owner - Limitations. If a river or stream, navigable or not navigable, carries away by sudden violence a considerable and distinguishable part of a bank and bears it to the opposite bank or to another part of the same bank, the owner of the part carried away may reclaim it within a year after the owner of the land to which it has been united takes possession thereof.

47-06-07. Ancient streambed taken by owners of new course as indemnity. If a stream, navigable or not navigable, forms a new course abandoning its ancient bed, the owners of the land newly occupied take by way of indemnity the ancient bed abandoned, each in proportion to the land of which the owner has been deprived.

47-06-08. Islands and relict lands in navigable streams belong to state. Islands and accumulations of land formed in the beds of streams which are navigable belong to the state, if there is no title or prescription to the contrary. The control and management, including the power to execute surface and mineral leases, of islands, relictions, and accumulations of land owned by the state of North Dakota in navigable streams and waters and the beds thereof, must be governed by chapter 61-33.

47-06-09. Islands and relict land in nonnavigable streams. An island or accumulation of land formed in a stream which is not navigable belongs to the owner of the shore on that side where the island or accumulation is formed, or if not formed on one side only, to the owners of the shore on the two sides, divided by an imaginary line drawn through the middle of the river.

47-06-10. Island formed by dividing stream - Title. If a stream, navigable or not navigable, in forming itself a new arm divides itself and surrounds land belonging to the owner of the shore and thereby forms an island, the island belongs to such owner.

CHAPTER 48-01.2 PUBLIC IMPROVEMENT BIDS AND CONTRACTS

<u>Section</u>	<u>Page</u>
48-01.2-01 Definitions	48-01.2: 1
48-01.2-02 Plans and specifications for a public improvement contract.....	48-01.2: 2
48-01.2-03 Specified brands, marks, names, or patented articles may not be specified.....	48-01.2: 2
48-01.2-04 Publication of advertisement for bids – Emergency exception	48-01.2: 3
48-01.2-05 Contents of advertisement	48-01.2: 3
48-01.2-06 Bid requirements for public improvements	48-01.2: 4
48-01.2-07 Opening of bids – Award of contract	48-01.2: 4
48-01.2-08 Officers must not be interested in contract.....	48-01.2: 4
48-01.2-09 Contract with successful bidder.....	48-01.2: 4
48-01.2-10 Bonds from contractors for public improvements	48-01.2: 4
48-01.2-11 Claim for public improvement – Suit on contractor's bond	48-01.2: 4
48-01.2-12 Claims – When barred as liens against contractor and surety	48-01.2: 5
48-01.2-13 Payments	48-01.2: 5
48-01.2-14 Late payment – Rate of interest	48-01.2: 5
48-01.2-15 Appropriations may not be diverted.....	48-01.2: 6
48-01.2-16 Architects, landscape architects, and engineers - Duties	48-01.2: 6
48-01.2-17 Coordination of work under multiple prime bids	48-01.2: 6
48-01.2-18 Construction management – Governing body determinations	48-01.2: 6
48-01.2-19 Agency construction management procurement procedures – Contract	48-01.2: 7
48-01.2-20 Selection process for construction management at-risk planning and design phase services	48-01.2: 8
48-01.2-21 Selection process for construction management at-risk services – Construction services	48-01.2: 10
48-01.2-22 Subcontractor bids	48-01.2: 10
48-01.2-23 Bond required.....	48-01.2: 11
48-01.2-24 Public buildings and facilities – Statement of compliance with accessibility guidelines	48-01.2: 11
48-01.2-25 Authorization of expansion of public improvements by legislative assembly or budget section	48-01.2: 11

CHAPTER 48-01.2

PUBLIC IMPROVEMENT BIDS AND CONTRACTS

48-01.2-01. Definitions. In this chapter, unless the context otherwise requires:

1. "Agency construction management" means a public improvement delivery method through which a person provides to a governing body experienced construction management services, including ideas on constructability, documentation of design and construction, and coordination of project schedules.
2. "Architect" means an individual registered as an architect under chapter 43-03.
3. "Common ownership" means a shared management or ownership interest in two or more entities.
4. "Construction" means the process of building, altering, repairing, improving, or demolishing any public structure or building or other improvement to any public property. The term does not include the routine operation or maintenance of existing facilities, structures, buildings, or real property or demolition projects costing less than one hundred thousand dollars.
5. "Construction administration" means administrative services provided by a governing body or an architect, a landscape architect, or an engineer, and includes providing clarifications, submittal review, recommendations for payment, preparation of change orders, and other administrative services included in the agreement with the architect, landscape architect, or engineer. The term does not include supervision of the construction activities for the construction contracts.
6. "Construction management at-risk" means a public improvement delivery method through which a construction manager provides advice to the governing body during the planning and design phase of a public improvement, negotiates a contract with the governing body for the general construction bid package of the public improvement, and contracts with subcontractors and suppliers for the actual construction of the public improvement.
7. "Construction manager" means a contractor licensed under chapter 43-07 or an individual employed by a licensed contractor which has the expertise and resources to assist a governing body with the management of the design, contracting, and construction aspects of a public improvement.
8. "Construction observation" means observation of construction work and site visits by an architect, a landscape architect, or an engineer to assist the governing body in determining that the work conforms in general to the requirements of the construction contract and that the contractor has implemented and maintained the integrity of the design concept of a project as a functioning whole as indicated in the construction contract.
9. "Contract" means a type of agency agreement for the procurement of services under this chapter.
10. "Contractor" means any person, duly licensed, that undertakes or enters a contract with a governing body for the construction or construction management of any public improvement, including multiple prime contracts.
11. "Design services" means architect services, engineer services, landscape architect services, or surveyor services.

12. "Design-bid-build" means a project delivery method in which design and construction of the project are in sequential phases, and in which the first project phase involves design services, the second project phase involves securing a contractor through a bidding process, and the third project phase provides for construction of the project by a contractor awarded the project.
13. "Emergency situation" means a sudden generally unexpected occurrence that requires immediate action to protect public health, safety, or property and which ends when the immediate threat to public health, safety, or property ceases and services are restored. The term does not include a lack of planning on the part of the governing body, architect, engineer, landscape architect, or contractor.
14. "Engineer" means an individual registered as an engineer under chapter 43-19.
15. "General conditions" means the written portion of a contract setting forth the governing body's minimum acceptable performance requirements, including the rights, responsibilities, and relationships of the parties involved in the performance of the contract.
16. "Governing body" means the governing officer or board of a state entity or a political subdivision.
17. "Guaranteed maximum price" means the maximum amount a construction manager at-risk may be paid under a contract to construct a public improvement.
18. "Landscape architect services" means landscape architecture services governed under chapter 43-03.
19. "Lowest responsible bidder" means the lowest best bidder for the project considering past experience, financial condition, past work with the governing body, and other pertinent attributes that may be identified in the advertisement for bids.
20. "Public improvement" means any improvement undertaken by a governing body for the good of the public and which is paid for with public funds and constructed on public land or within a public building and includes an improvement on public or nonpublic land if any portion of the construction phase of the project is paid for with public funds. The term does not include a county road construction and maintenance, state highway, or public service commission project governed by title 11, 24, or 38.
21. "Subcontractor" means a person that contracts to perform work or render a service to a contractor or to another subcontractor as part of a contract with a governing body.

48-01.2-02. Plans and specifications for a public improvement contract. Except as otherwise provided in this chapter, if a contract for the construction of a public improvement is estimated to cost in excess of one hundred thousand dollars, the governing body shall procure plans, drawings, and specifications for the improvement from an architect or engineer. For a public building in use by or to be used by the North Dakota agricultural experiment station in connection with farm or agricultural research operations, the plans, drawings, and specifications, with the approval of the state board of higher education, may be prepared by an engineer in the regular employment of the agricultural experiment station. For a public building in use by or to be used by the department of transportation for the storage and housing of road materials or road machinery, equipment, and tools, the plans, drawings, and specifications may be prepared by an engineer employed by the department of transportation.

48-01.2-03. Specified brands, marks, names, or patented articles may not be specified. A governing body, in specifying materials to be used for a public improvement or in plans or specifications for a public improvement, may not request bids for any article of a

specified or copyrighted brand or name, the product of any one manufacturer, or any patented apparatus or appliance when the requirement will prevent proper competition, unless the specifications also request bids on other similar articles of equal value, utility, and merit.

48-01.2-04. Publication of advertisement for bids - Emergency exception.

1. Except as otherwise provided in this chapter, if the construction of a public improvement is estimated to cost in excess of one hundred thousand dollars, the governing body shall advertise for bids by publishing for three consecutive weeks. The first publication of the advertisement must be at least twenty-one days before the date of the opening of bids. The advertisement must be published in the official newspaper of the political subdivision in which the public improvement is or will be located, and in a trade publication of general circulation among the contractors, building manufacturers, and dealers in this state, except the advertisement for a public improvement financed by special assessments need be published only once each week for two weeks in the official newspaper with the first publication being at least fourteen days before the bid opening.
2. If a governing body declares an emergency situation, the governing body may contract for the construction of a public improvement without seeking bids.

48-01.2-05. Contents of advertisement. The advertisement for bids required by section 48-01.2-04 must state:

1. The nature of the work and the type and location of the proposed public improvement.
2. When and where the plans, drawings, and specifications may be seen and examined.
3. The place, date, and time the bids will be opened.
4. That each bid must be accompanied by a separate envelope containing the contractor's license and bid security. The bid security must be in a sum equal to five percent of the full amount of the bid and must be in the form of a bidder's bond. A bidder's bond must be executed by the bidder as principal and by a surety, conditioned that if the principal's bid is accepted and the contract awarded to the principal, the principal, within ten days after notice of the award, shall execute a contract in accordance with the terms of the bid and the bid bond and any condition of the governing body. A countersignature of a bid bond is not required under this section. If a successful bidder does not execute a contract within the ten days allowed, the bidder's bond must be forfeited to the governing body and the project awarded to the next lowest responsible bidder.
5. That a bidder, except a bidder on a municipal, rural, and industrial water supply project using funds provided under Public Law No. 99-294 [100 Stat. 426; 43 U.S.C. 390a], must be licensed for the full amount of the bid as required by sections 43-07-05 and 43-07-12. For projects using funds provided under Public Law No. 99-294 [100 Stat. 426; 43 U.S.C. 390a], the advertisement must state that, unless a bidder obtains a contractor's license for the full amount of its bid within twenty days after it is determined the bidder is the lowest responsible bidder, the bid must be rejected and the contract awarded to the next lowest responsible bidder.
6. That no bid may be read or considered if the bid does not fully comply with the requirements of this section and that any deficient bid submitted must be resealed and returned to the bidder immediately.
7. That the governing body reserves the right to reject any and all bids and rebid the project until a satisfactory bid is received.

48-01.2-06. Bid requirements for public improvements. Multiple prime bids for the general, electrical, and mechanical portions of a project are required when any individual general, electrical, or mechanical contract or any combination of individual contracts is in excess of one hundred thousand dollars. If a general, mechanical, or electrical contract is estimated to be less than twenty-five thousand dollars, the contract may be included in one of the other prime contracts. A governing body may allow submission of a single prime bid for the complete project or bids for other specialized portions of the project. A governing body may not accept the single prime bid unless that bid is lower than the combined total of the lowest responsible multiple bids for the project.

48-01.2-07. Opening of bids - Award of contract. At the time and place specified in the notice, a governing body shall open publicly and read aloud each responsible bid received and award the contract to the lowest responsible bidder. A governing body may reject any and all bids and readvertise for bids if no bid is satisfactory or if the governing body determines any agreement has been entered by the bidders or others to prevent competition. The governing body may advertise for new bids in accordance with this chapter until a satisfactory bid is received.

48-01.2-08. Officers must not be interested in contract. A governing body, or any member, employee, or appointee of a governing body, may not be pecuniarily interested or concerned in a contract for a public improvement entered by the governing body.

48-01.2-09. Contract with successful bidder. A governing body shall enter a contract with the lowest responsible bidder as determined under section 48-01.2-07. The contract must contain the following:

1. The written terms of the agreement and any associated document signed by the governing body and the contractor;
2. The required surety bond; and
3. Any other document deemed appropriate by the governing body and identified in the advertisement for bids.

48-01.2-10. Bonds from contractors for public improvements.

1. Unless otherwise provided under this chapter, a governing body authorized to enter a contract for the construction of a public improvement in excess of one hundred thousand dollars shall take from the contractor a bond before permitting any work to be done on the contract. The bond must be for an amount equal at least to the price stated in the contract. The bond must be conditioned to be void if the contractor and all subcontractors fully perform all terms, conditions, and provisions of the contract and pay all bills or claims on account of labor performed and any supplies, and materials furnished and used in the performance of the contract, including all demands of subcontractors. The requirement that bills and claims be paid must include the requirement that interest of the amount authorized under section 13-01-14 be paid on bills and claims not paid within ninety days. The bond is security for all bills, claims, and demands until fully paid, with preference to labor and material suppliers as to payment. The bond must run to the governing body, but any person having a lawful claim against the contractor or any subcontractor may sue on the bond.
2. A governing body may not require any person required to provide a surety bond to obtain the surety bond from a specified insurance or surety company or insurance producer or to submit financial data to the company or producer.

48-01.2-11. Claim for public improvement - Suit on contractor's bond. A person that has furnished labor or material for any public improvement for which a bond is furnished and has not been paid in full within ninety days after completion of the contribution of labor or materials

may sue on the bond for the amount unpaid at the time of institution of suit. However, a person having a direct contractual relationship with a subcontractor, but no contractual relationship with the contractor furnishing the bond, does not have a claim for relief upon the bond unless that person has given written notice to the contractor, within ninety days from the date on which the person completed the contribution, stating with substantial accuracy the amount claimed and the name of the person for which the contribution was performed. The notice must be served by registered mail in an envelope addressed to the contractor at any place the contractor maintains an office, conducts business, or has a residence.

A governing body shall provide a certified copy of the bond and the contract for which the bond was given to any individual who submits an affidavit that either the individual has supplied labor or materials for the improvement and that payment has not been made or that the individual is being sued on the bond. The individual requesting the copy shall pay the actual cost of the preparation of the certified copy of the bond and the contract. The certified copy of the bond is prima facie evidence of the contents, execution, and delivery of the original.

48-01.2-12. Claims - When barred as liens against contractor and surety. Any claim for any labor, material, or supply furnished for an improvement, upon which a suit is not commenced within one year after completion and acceptance of the project, is barred as a lien or claim against the contractor and the contractor's surety and any right of setoff or counterclaim may be enforced in any court in this state against the governing body, the contractor, or the contractor's surety. This chapter does not bar the right of any person who has furnished any labor, supply, or material to any subcontractor to enforce the claim against the subcontractor.

48-01.2-13. Payments. At least once in each calendar month during the continuance of work upon any public improvement, the governing body shall receive and consider any partial payment estimate prepared by the architect or engineer. Upon review and approval, the governing body shall pay an estimate in an amount equal to the estimated value of the labor and material furnished plus the material adequately stored. A partial payment estimate must include retentions or retainage as follows: ten percent of each estimate until the project is fifty percent completed with no further retainage on estimates during the continuance of the contract unless unsatisfactory progress or performance is documented. The governing body may, upon completion of ninety-five percent of the contract, pay to the contractor up to ninety-five percent of the amount retained from previous estimates. The remaining amount retained must be paid to the contractor in the amounts and at the times approved by the architect or engineer. The governing body shall make final payment of all moneys due to the contractor following completion of all work, acceptance of the project by the governing body, and the provision of necessary releases. If an architect or engineer is not employed by the governing body for administration of the contract, the contractor, at the end of each calendar month during the continuance of work, may furnish a payment estimate to the governing body. After considering and approving an estimate, the governing body shall draw a warrant upon the proper fund and promptly transmit the warrant to the contractor. The governing body may invest or deposit any retained amount in a financial association or institution so that the contractor's money retained is earning interest or dividends for the benefit of the contractor. Any amount invested or deposited must remain in the name of the governing body until final payment of all money due to the contractor is to be made.

48-01.2-14. Late payment - Rate of interest. If a governing body fails or neglects to consider any estimate properly submitted, pay any estimate approved, or make final payment upon completion and acceptance of a public improvement, for a period of more than thirty days from the date of approval of the estimate or the completion and acceptance date, the governing body shall pay interest on the estimate or final payment from the date of approval. The interest rate must be the rate per annum of two percentage points below the Bank of North Dakota prime interest rate as set thirty days from the date of the estimate or completion date until the issuance of a proper warrant for the payment. The governing body shall compute and add the interest to the face of the estimate or final payment and the interest must be charged to the fund upon which payment for the contract is to be made. No payment for, or on account of, any contract made under this chapter may be made except upon estimate of the architect, engineer, or contractor as provided in section 48-01.2-13.

48-01.2-15. Appropriations may not be diverted. No portion of any special appropriation for the erection of any public improvement, or for the doing of any work, may be drawn from the state treasury in advance of the work being completed or of the materials furnished. The funds may be drawn only upon proper estimates approved by the governing body of the institution for which the improvement is being constructed. No portion of any appropriation for any purpose may be drawn from the treasury before the appropriation is required for the purpose for which it is made, and no appropriation that is or may be made for any purpose with respect to the construction or improvement may be drawn or used for any other purpose until the construction or improvement for which the appropriation was made is fully completed and paid for.

48-01.2-16. Architects, landscape architects, and engineers - Duties. The governing body shall employ the architect, landscape architect, or engineer furnishing the plans as provided in this chapter or some other qualified person to provide construction administration and construction observation services for which the plans and specifications are prepared as provided by section 48-01.2-02. The architect, landscape architect, or engineer shall assist the governing body in determining that the contractor performs the work in accordance with the intent of the plans and specifications. As part of a site visit or construction observation, the architect, landscape architect, or engineer may not supervise, direct, or have control over the contractor's work. The architect, landscape architect, or engineer may not exercise control over or responsibility for the means, methods, techniques, sequences, or procedures of construction selected or used by the contractor, the quality control of the work, the security or safety on the site, any safety precaution or program incident to the contractor's work, the failure of the contractor to comply with any law or rule applicable to the contractor's furnishing of or performance of the work, or the failure of the contractor to furnish or perform the work in accordance with the construction contract. The architect, landscape architect, or engineer is entitled to receive a reasonable compensation to be fixed by the governing body. Any duty imposed or power conferred upon the governing body by this chapter applies to a successor to the governing body.

48-01.2-17. Coordination of work under multiple prime bids. If a public improvement is awarded as multiple prime contracts for the general, electrical, mechanical work, and other prime contracts as contained in the bid for the project, the governing body may assign the coordination of the electrical and mechanical contracts and any other contracts to the general contractor for the project to facilitate the coordination of the work.

48-01.2-18. Construction management - Governing body determinations.

1. Notwithstanding any other provision of law, a governing body may use the agency construction management or construction management at-risk delivery methods for construction of a public improvement if:
 - a. The agency construction manager has no common ownership or conflict of interest with the architect, landscape architect, or engineer involved in the planning and design of the public improvement or with any person engaged in the construction of the public improvement.
 - b. The construction manager at-risk has no common ownership or conflict of interest with the architect, landscape architect, or engineer involved in the planning and design of the public improvement.
2. Before utilizing the agency construction management or construction management at-risk delivery method, a governing body shall make the following determinations:
 - a. That it is in the best interest of the public to utilize the agency construction manager or construction manager at-risk public improvement delivery method.

- b. That the agency construction manager or construction manager at-risk planning and design phase services will not duplicate services normally provided by an architect or engineer.
 - c. That the agency construction manager or construction manager at-risk construction services will be in addition to and not duplicate the services provided for in the architect and engineer contracts.
- 3. The governing body shall provide written documentation of the determinations provided for under subsection 2 upon written request from any individual.

48-01.2-19. Agency construction management procurement procedures - Contract.

- 1. A governing body electing to utilize the agency construction management delivery method shall establish a construction management services selection committee composed of individuals the governing body determines to be qualified to make an informed decision as to the most competent and qualified person for the proposed public improvement.
- 2. The agency selection committee shall:
 - a. Develop a description of the proposed public improvement;
 - b. Enumerate each required agency construction management service for the proposed public improvement; and
 - c. Prepare the formal invitation request for qualifications, which must include the project title, the general scope of work, a description of each service required for the public improvement, the final selection criteria, the address to which responses to the request must be submitted, and the deadline for submission of responses.
- 3. The governing body shall publish a notice of the request for qualifications in a newspaper of general circulation in the county in which the public improvement is located and in a construction trade publication in general circulation among the contractors, building manufacturers, and dealers in this state and shall be published for three consecutive weeks, with the first publication being at least twenty-one days before the date of opening of the request for qualifications. Upon written request, the governing body shall mail a copy of the invitation to any interested party.
- 4. After the submission deadline, the selection committee shall hold interviews with at least three persons that have responded to the advertisement and which are deemed most qualified on the basis of information available before the interviews. If less than three persons have responded to the advertisement, the committee may readvertise or hold interviews with any person that submitted a response. The selection committee's determination as to which person will be interviewed must be in writing and must be based upon the committee's review and evaluation of all materials submitted. The written report of the committee must list the name of each person that responded to the advertisement and enumerate any reason for selecting any person to be interviewed. The written report must be available to the public upon written request. *The purpose of the interviews must be to provide any information required by the selection committee to fully acquaint the committee members with the relative qualifications of each person that responded to the advertisement.*
- 5. The selection committee shall evaluate each person interviewed on the basis of the following criteria:
 - a. The past performance of the person with respect to *prior public improvements*.

- b. The qualifications of proposed personnel.
 - c. The willingness to meet time and budget requirements of the governing body.
 - d. The business location of the person.
 - e. The recent, current, and projected workloads of the person.
 - f. Any related experience performing agency construction management services on projects of similar size and scope.
 - g. Any recent or current work by the person for the agency.
 - h. The ability of the person to provide the bond for the person's portion of the work on the public improvement.
 - i. The possession by the person of a class A contractor's license.
6. Based upon the evaluation under subsection 5, the selection committee shall rank the three persons which, in its judgment, are most qualified. If fewer than three persons responded to the advertisement, the selection committee shall rank each person that responded. The selection committee's report ranking the interviewed persons must be in writing and must include data substantiating the committee's determinations. The data must be available to the public upon written request.
7. The selection committee shall submit its written report ranking the interviewed persons to the governing body for evaluation and approval by the governing body. The governing body shall determine the final ranking of each person and provide written notification of the order of preference to each person that responded to the request for qualifications.
8. After providing the notice under subsection 7, the governing body shall negotiate a contract for services with the most qualified person at a compensation which is fair and reasonable to the governing body. If the governing body is unable to negotiate a satisfactory contract with that person, the governing body shall terminate negotiations with that person and commence negotiations in the same manner with the second and then the third most qualified person until a satisfactory contract has been negotiated. If no agreement is reached, three additional persons in order of the original ranking must be selected after consultation with the selection committee, and negotiations must be continued in the same manner until agreement is reached.
9. The governing body, at any time, may reject all proposals and readvertise or select another allowed project delivery method.

48-01.2-20. Selection process for construction management at-risk planning and design phase services.

1. A governing body electing to utilize a construction management at-risk delivery process for a proposed public improvement shall create a selection committee composed of:
- a. An administrative individual from the governing body.
 - b. A registered architect.
 - c. A registered engineer.
 - d. A contractor.

2. The governing body may compensate members of the selection committee. A member of the selection committee is not eligible to submit a proposal for the construction management at-risk contract under consideration.
3. Before issuing a notice of request for qualifications to enter a construction management at-risk services contract, the selection committee shall establish the content of the request for qualifications, which must include the following:
 - a. The identity of the governing body and a list of the members of the selection committee;
 - b. A description of the proposed public improvement;
 - c. The proposed budget limits of the public improvement;
 - d. The commencement and completion date of the public improvement;
 - e. The procedures to be used in submitting proposals;
 - f. The qualifications evaluation criteria and the relative weighting of items;
 - g. The subcontractor selection process to be used for construction services;
 - h. The number of persons to be included in the final list;
 - i. A statement indicating whether formal interviews will be held;
 - j. A statement indicating whether fees and prices must be included in any proposal;
 - k. A description of contract terms and conditions for the construction management at-risk services contract, including a description of the scope of services to be provided;
 - l. A description of the procedures to be used for making the contract award;
 - m. The insurance and bonding requirements and a statement requiring any person submitting a proposal to include with the proposal a certificate of insurance, indicating liability coverage; and
 - n. The identification and location of other pertinent information the governing body may possess, including surveys, soils reports, drawings or models of existing structures, environmental studies, photographs, or references to public records.
4. The request for qualifications submittal procedures must include the specific format that must be used by a construction manager at-risk when submitting a request for qualifications and the submission deadline location for submission of the request for qualifications.
5. The selection committee shall determine the appropriate evaluation criteria for each request for qualifications, including:
 - a. The person's experience on any similar project;
 - b. The person's existing workload and available capacity;
 - c. The person's key personnel experience on any similar project;
 - d. The person's safety record;

- e. The person's familiarity with the location of the public improvement;
 - f. The person's fees and expenses;
 - g. The person's compliance with state and federal law; and
 - h. Any reasonable information the selection committee deems necessary.
6. The selection committee shall evaluate each submission based on the qualification criteria under subsection 5 and shall include the numeric scoring of each criteria item on a weighted basis, with no item being weighted at more than twenty percent and no less than five percent. The weighting of the qualification criteria must be done in a manner to ensure no subjective bias and encourage the maximum participation of qualified construction managers at-risk.
7. a. The selection committee shall review each proposal submitted and include the three highest ranked construction managers at-risk on a list of finalists. If fewer than three proposals were submitted, the governing body may resolicit for qualifications, interview any person that applied, or consider using another allowed delivery method. The selection committee shall recommend to the governing body the construction manager at-risk receiving the highest score on the evaluation criteria.
- b. If a construction manager at-risk selected for a public improvement declines the appointment or is unable to reach agreement with the governing body concerning fees or terms of the contract, the governing body shall terminate negotiations with the construction manager at-risk and begin negotiations with the construction manager at-risk with the next highest score and continue that process until agreement is reached or the list of finalists is exhausted.
- c. If the list of finalists is exhausted, the governing body shall request the selection committee to revise the request for qualifications and solicit new submissions. If the selection committee is unable to provide any constructive revision to the request for qualifications, the governing body shall select another allowed public improvement delivery method.
- d. The governing body, upon reaching an agreement with a construction manager at-risk on compensation and contract terms for construction management planning and design services, shall enter a written contract with the construction manager at-risk for the services.

48-01.2-21. Selection process for construction management at-risk services - Construction services. After the governing body and the construction manager at-risk have finalized the contract for planning and design phase services and the process has progressed sufficiently to provide the construction manager at-risk the necessary project details, the governing body and the construction manager at-risk shall enter negotiations for a guaranteed maximum price and contract terms for the general construction of the public improvement. If the governing body is unable to negotiate a satisfactory contract with the highest qualified person on the list of finalists, the governing body shall terminate negotiations with that person. The governing body shall commence negotiations with the next most qualified person on the list in sequence until an agreement is reached or a determination is made to reject all persons on the list. If the governing body reaches an agreement with a construction manager at-risk on a guaranteed maximum price and on contract terms, the governing body and construction manager at-risk shall enter a written contract for the general construction management at-risk construction services.

48-01.2-22. Subcontractor bids.

1. An agency construction manager selected for a public improvement shall advertise publicly and receive bids from subcontractors for the work items necessary to complete the general construction portions of the improvement. The governing body may influence the selection of the subcontractors, but only insofar as the governing body's past experience with a subcontractor or a current legal dispute with a subcontractor.
2. A construction manager at-risk selected for a public improvement shall advertise publicly and receive bids from subcontractors for the work items the construction manager at-risk chooses not to perform. The governing body may influence the selection of the subcontractors, but only insofar as the governing body's past experience with a subcontractor or a current legal dispute with a subcontractor.

48-01.2-23. Bond required.

1. An agency construction manager, before starting any work, shall provide the governing body with a bond that is equal to the cost of the agency construction manager's services with the governing body. Each contractor performing services on the public improvement shall provide the governing body with a separate bond for the contractor's portion of the public improvement.
2. A construction manager at-risk, before starting any construction, shall provide the governing body with a bond in an amount at least equal to the amount of the guaranteed maximum price. The bond must be conditioned to be void if the contractor and all subcontractors fully perform all terms, conditions, and provisions of the construction services contract and pay all bills or claims on account of labor and materials, including supplies used for machinery and equipment, performed, furnished, and used in the performance of the contract, including all demands of subcontractors. The requirement that bills and claims be paid must include the requirement that interest of the amount authorized under section 13-01.1-02 be paid on bills and claims not paid within ninety days. The bond is security for all bills, claims, and demands until fully paid, with preference to labor and material suppliers as to payment. The bond must run to the governing body, but any person having a lawful claim against the contractor may sue on the bond.
3. Each mechanical contractor and electrical contractor providing work on a public improvement project that utilizes the construction management at-risk delivery method shall provide the governing body with a separate bond for the contractor's portion of the public improvement.

48-01.2-24. Public buildings and facilities - Statement of compliance with accessibility guidelines. Each governing body shall require a statement from any person preparing the plans and specifications for a public building or facility that, in the professional judgment of that person, the plans and specifications are in conformance with the Americans with Disabilities Act accessibility guidelines for buildings and facilities as contained in the appendix to title 28, Code of Federal Regulations, part 36 [28 CFR 36], subject to the exception stated in section 54-21.3-04.1.

48-01.2-25. Authorization of expansion of public improvements by legislative assembly or budget section. Notwithstanding any other provision of law, a state agency or institution may not significantly change or expand a public improvement beyond what has been approved by the legislative assembly unless the legislative assembly, or the budget section of the legislative council if the legislative assembly is not in session, approves the change or expansion of the project or any additional expenditure for the project. For the purposes of this section, a significant change or expansion includes the construction of an addition to a building, including skywalks or other type of enclosed walkway, or any other substantial increase in the area of the building, but does not include the construction of building entrances and stairwells.

CHAPTER 54-27

FISCAL ADMINISTRATION

54-27-25. Tobacco settlement trust fund - Interest on fund - Uses. There is created in the state treasury a tobacco settlement trust fund. The fund consists of the tobacco settlement dollars obtained by the state under sections IX (payments) and XI (calculation and disbursement of payments) of the master settlement agreement and consent agreement adopted by the east central judicial district court in its judgment entered December 28, 1998 [Civil No. 98-3778]. All moneys received by the state pursuant to the judgment and all moneys received by the state for enforcement of the judgment must be deposited in the fund. Interest earned on the fund must be credited to the fund and deposited in the fund. The principal and interest of the fund must be allocated as follows:

1. Transfers to a community health trust fund to be administered by the state department of health. The state department of health may use funds as appropriated for community-based public health programs and other public health programs, including programs with emphasis on preventing or reducing tobacco usage in this state. Transfers under this subsection must equal ten percent of total annual transfers from the tobacco settlement trust fund.
2. Transfers to the common schools trust fund to become a part of the principal of that fund. Transfers under this subsection must equal forty-five percent of total annual transfers from the tobacco settlement trust fund.
3. Transfers to the water development trust fund to be used to address the long-term water development and management needs of the state. Transfers under this subsection must equal forty-five percent of the total annual transfers from the tobacco settlement trust fund.

Transfers to the funds under this section must be made within thirty days of receipt by the tobacco settlement trust fund.

CHAPTER 54-35

LEGISLATIVE COUNCIL

54-35-02.7. Garrison diversion overview. The legislative council is responsible for legislative overview of the Garrison diversion project and related matters and for any necessary discussions with adjacent states on water-related topics.

CHAPTER 54-44

OFFICE OF MANAGEMENT AND BUDGET

54-44-04. Powers and duties of the director of the office of management and budget. The director of the office of management and budget, or such subordinate officer as the director shall designate:

23. Shall account for and monitor all funds received by the state from any tobacco settlement dollars described in section 54-27-25 and all associated settlements and related funds and shall report to the budget section of the legislative council on the status of such funds, settlements, offsets, and net resulting revenues and any other related information the budget section requires.

CHAPTER 54-44.7
ARCHITECT, ENGINEER, AND LAND SURVEYING SERVICES

<u>Section</u>		<u>Page</u>
54-44.7-01	Definition	54-44.7: 1
54-44.7-02	Applicability - Policy	54-44.7: 1
54-44.7-03	Procurement procedures	54-44.7: 1
54-44.7-04	Exception	54-44.7: 2
54-44.7-05	Splitting projects or service contracts prohibited	54-44.7: 3

CHAPTER 54-44.7

ARCHITECT, ENGINEER, AND LAND SURVEYING SERVICES

54-44.7-01. Definition. "Architect, engineer, construction management, and land surveying services" are those professional services associated with the practice of architecture, professional engineering, professional land surveying, landscape architecture, interior design pertaining to construction, and construction management, as defined by the laws of this state, as well as incidental services that members of these professions and those in their employ may logically or justifiably perform, including studies, investigations, surveys, evaluations, consultations, planning, programming, conceptual designs, plans and specifications, cost estimates, inspections, construction management, shop drawing reviews, sample recommendations, preparation of operating and maintenance manuals, and other related services, except for professional services related to prefabricated steel for bridge purposes.

54-44.7-02. Applicability - Policy. Architect, engineer, construction management, and land surveying services must be procured as provided in this chapter. It is the policy of this state that all North Dakota state agencies shall negotiate contracts for services on the basis of demonstrated competence and qualification for the particular type of services required.

54-44.7-03. Procurement procedures.

1. Each using agency shall establish its own architect, engineer, construction management, and land surveying services selection committee hereinafter referred to as the agency selection committee, which must be composed of those individuals whom the agency head determines to be qualified to make an informed decision as to the most competent and qualified firm for the proposed project. The head of the using agency or that person's qualified, responsible designee shall sit as a member of the agency selection committee for the purpose of coordinating and accounting for the committee's work.
2. The agency selection committee is responsible for all of the following:
 - a. Developing a description of the proposed project.
 - b. Enumerating all required professional services for that project.
 - c. Preparing a formal invitation to firms for submission of information. The invitation must include, but not be limited to, the project title, the general scope of work, a description of all professional services required for that project, and the submission deadline. The invitation or notice thereof must be published. Upon written request, the agency shall also mail copies of the invitation to any interested party. The manner in which this must be published, the content of the publication, and the frequency of the publication, must be established by regulation of the agency selection committee.
3. The date for submission of information from interested persons or firms in response to an invitation must be not less than twenty-one days after publication of the invitation. Interested architect, engineer, and land surveying persons or firms must be required to respond to the invitation with the submission of the information required in general services administration forms SF 254 and SF 255, architect-engineer related services questionnaire for specific project, or such similar information as the agency selection committee may prescribe by rule.
4. Following receipt of information from all interested persons and firms, the agency selection committee shall hold interviews with at least three persons or firms who have responded to the committee's advertisement and who are deemed most qualified on the basis of information available prior to the interviews. If less than three persons or firms have responded to the advertisement, the committee shall

readvertise or hold interviews with those who did respond. The agency selection committee's determination as to which will be interviewed must be in writing and must be based upon its review and evaluation of all submitted materials. The written report of the committee must specifically list the names of all persons and firms that responded to the advertisement and enumerate the reasons of the committee for selecting those to be interviewed. This written report must be available to the public upon written request. The purpose of the interviews must be to provide such further information as may be required by the agency selection committee to fully acquaint itself with the relative qualifications of the several interested persons or firms.

5. The agency selection committee shall evaluate each of the persons or firms interviewed on the basis of the following criteria:
 - a. Past performance.
 - b. The ability of professional personnel.
 - c. Willingness to meet time and budget requirements.
 - d. Location.
 - e. Recent, current, and projected workloads of the persons or firms.
 - f. Related experience on similar projects.
 - g. Recent and current work for the agency.

Based upon these evaluations, the agency selection committee shall select the three which, in its judgment, are most qualified, ranking the three in priority order. The agency selection committee's report ranking the interviewed persons or firms must be in writing and must include data substantiating its determinations. This data must be available to the public upon written request.

6. The agency selection committee shall submit its written report ranking the interviewed persons or firms to the governing body of the using agency for its evaluation and approval. When it is determined that the ranking report is final by the agency, written notification of the selection and order of preference must be immediately sent to all of those that responded to the agency selection committee's invitation to submit information.
7. The governing body of the using agency or its designee shall negotiate a contract for services with the most qualified person or firm, at a compensation which is fair and reasonable to the state, after notice of selection and ranking. Should the governing body of the using agency or its designee be unable to negotiate a satisfactory contract with this person or firm, negotiations must be formally terminated. Negotiations must commence in the same manner with the second and then the third most qualified until a satisfactory contract has been negotiated. If no agreement is reached, three additional persons or firms in order of their competence and qualifications must be selected after consultation with the agency selection committee, and negotiations must be continued in the same manner until agreement is reached.

54-44.7-04. Exception.

1. All state agencies securing architect, engineer, construction management, or land surveying services for projects for which the fees are estimated not to exceed twenty-five thousand dollars may employ the architects, engineers, construction managers, and land surveyors by direct negotiation and selection, taking into account all of the following:

- a. The nature of the project.
- b. The proximity of the architect, engineer, construction management, or land surveying services to the project.
- c. The capability of the architect, engineer, construction manager, or land surveyor to produce the required services within a reasonable time.
- d. Past performance.
- e. Ability to meet project budget requirements.

This procedure shall still follow state policy set forth above.

- 2. Fees paid pursuant to this section during the twelve-month period immediately preceding negotiation of the contract by any single state agency for professional services performed by any one architectural, engineering, or land surveying person or firm may not exceed fifty thousand dollars. All persons or firms seeking to render professional services pursuant to this section shall furnish the state agency with which the firm is negotiating a list of professional services, including the fees paid, performed for the state agency during the twelve months immediately preceding the contract being negotiated.

54-44.7-05. Splitting projects or services contracts prohibited. No using agency may separate service contracts or split or break projects for the purpose of circumventing the provisions of this chapter.

CHAPTER 54-57
OFFICE OF ADMINISTRATIVE HEARINGS

<u>Section</u>		<u>Page</u>
54-57-03	Hearings before administrative law judges.....	54-57: 1
54-57-03.1	Hearings after judgment	54-57: 2
54-57-04	Duties of administrative law judges	54-57: 2

CHAPTER 54-57

OFFICE OF ADMINISTRATIVE HEARINGS

54-57-03. Hearings before administrative law judges.

1. Notwithstanding the authority granted in chapter 28-32 allowing agency heads or other persons to preside in an administrative proceeding, all adjudicative proceedings of administrative agencies under chapter 28-32, except those of the public service commission, the industrial commission, the insurance commissioner, workforce safety and insurance, the state engineer, the department of transportation, job service North Dakota, and the labor commissioner, must be conducted by the office of administrative hearings in accordance with the adjudicative proceedings provisions of chapter 28-32 and any rules adopted pursuant to chapter 28-32. But, appeals hearings pursuant to section 61-03-22 and drainage appeals from water resource boards to the state engineer pursuant to chapter 61-32 must be conducted by the office of administrative hearings. Additionally, hearings of the department of corrections and rehabilitation for the parole board in accordance with chapter 12-59, regarding parole violations; job discipline and dismissal appeals to the board of higher education; Individuals With Disabilities Education Act and section 504 due process hearings of the superintendent of public instruction; and chapter 37-19.1 veterans' preferences hearings for any agency must be conducted by the office of administrative hearings in accordance with applicable laws.
2. The agency head shall make a written request to the director requesting the designation of an administrative law judge to preside for each administrative proceeding or adjudicative proceeding to be held.
3. Informal disposition of an administrative proceeding or adjudicative proceeding may be made by an agency at any time before or after the designation of an administrative law judge from the office of administrative hearings.
4. If a party to an administrative proceeding or adjudicative proceeding is in default, the agency may issue a default order and a written notice of default, including a statement of the grounds for default, prior to the hearing. The agency shall determine all the issues involved. If issued, the default notice and order must be served upon all the parties and the administrative law judge, if one has been designated to preside. After service of the default notice and order, if a hearing is necessary to complete the administrative action with or without the participation of the party in default, an administrative law judge from the office of administrative hearings must preside.
5. When designating administrative law judges to preside in an administrative proceeding or adjudicative proceeding, the director shall attempt to assign an administrative law judge having expertise in the subject matter to be dealt with.

6. The director of administrative hearings may assign an administrative law judge to preside in an administrative proceeding or adjudicative proceeding, upon request, to any agency exempted from the provisions of this section, to any agency, or part of any agency, that is not an administrative agency subject to the provisions of chapter 28-32, to any unit of local government in this state, to any tribal government in this state, to the judicial branch, or to any agency to conduct a rulemaking hearing.

54-57-03.1. Hearings after judgment. The office of administrative hearings may not hold hearings on the same issue involving the same parties as the original hearing after a judgment has been rendered by a court concerning that issue unless authorized to or directed to by that court.

54-57-04. Duties of administrative law judges. All administrative law judges shall comply with the duties of hearing officers under section 28-32-31 for all hearings of administrative agencies under chapter 28-32, as well as for all hearings of administrative agencies not under chapter 28-32, in accordance with applicable laws.

**CHAPTER 57-02
GENERAL PROPERTY ASSESSMENT**

<u>Section</u>		<u>Page</u>
57-02-01	Definitions	57-02: 1
57-02-08.4	Conditional property tax exemption for owners of wetlands	57-02: 2
57-02-08.5	Wetlands tax exemption payment - Certification	57-02: 3
57-02-08.6	Authorization for receipt of funds	57-02: 3

CHAPTER 57-02

GENERAL PROPERTY ASSESSMENT

57-02-01. Definitions. As used in this title, unless the context or subject matter otherwise requires:

1. "Agricultural property" means platted or unplatted lands used for raising agricultural crops or grazing farm animals, except lands platted and assessed as agricultural property prior to March 30, 1981, shall continue to be assessed as agricultural property until put to a use other than raising agricultural crops or grazing farm animals. Agricultural property includes land on which a greenhouse or other building is located if the land is used for a nursery or other purpose associated with the operation of the greenhouse. The time limitations contained in this section may not be construed to prevent property that was assessed as other than agricultural property from being assessed as agricultural property if the property otherwise qualifies under this subsection. Property platted on or after March 30, 1981, is not agricultural property when any four of the following conditions exist:
 - a. The land is platted by the owner.
 - b. Public improvements including sewer, water, or streets are in place.
 - c. Topsoil is removed or topography is disturbed to the extent that the property cannot be used to raise crops or graze farm animals.
 - d. Property is zoned other than agricultural.
 - e. Property has assumed an urban atmosphere because of adjacent residential or commercial development on three or more sides.
 - f. The parcel is less than ten acres [4.05 hectares] and not contiguous to agricultural property.
 - g. The property sells for more than four times the county average true and full agricultural value.
2. "Air carrier transportation property" means the operative property of each airline whose property is assessed for taxation purposes pursuant to chapters 57-06 and 57-32.
3. "Assessed valuation" means fifty percent of the true and full value of property.
4. "Centrally assessed property" means all property which is assessed by the state board of equalization under chapters 57-05, 57-06, and 57-32.
5. "Commercial property" means all property, or portions of property, not included in the classes of property defined in subsections 1, 4, 11, and 12.
6. "Credits" means and includes every claim and demand for money or other valuable thing, and every annuity or sum of money receivable at stated periods, due or to become due, and all claims and demands secured by deeds or mortgages, due or to become due.
7. "Governing body" means a board of county commissioners, city council, board of city commissioners, school board, or board of education, or the similarly constituted and acting board of any other municipality.
8. "Money" or "moneys" means gold and silver coin, treasury notes, bank notes, and every deposit which any person owning the same or holding in trust and residing in this state is entitled to withdraw as money or on demand.
9. "Municipality" or "taxing district" means a county, city, township, school district, water conservation and flood control district, Garrison Diversion Conservancy District, county

park district, joint county park district, irrigation district, park district, rural fire protection district, or any other subdivision of the state empowered to levy taxes.

10. "Person" includes a firm, corporation, or limited liability company.
11. "Railroad property" means the operating property, including franchises, of each railroad operated in this state including any electric or other street or interurban railway.
12. "Residential property" means all property, or portions of property, used by an individual or group of individuals as a dwelling, including property upon which a mobile home is located but not including hotel and motel accommodations required to be licensed under chapter 23-09 nor structures providing living accommodations for four or more separate family units nor any tract of land upon which four or more mobile homes are located.
13. "Taxable valuation" signifies the valuation remaining after deducting exemptions and making other reductions from the original assessed valuation, and is the valuation upon which the rate of levy finally is computed and against which the taxes finally are extended.
14. "Tract", "lot", "piece or parcel of real property", or "piece or parcel of land" means any contiguous quantity of land in the possession of, owned by or recorded as the property of, the same claimant, person, or company.
15. "True and full value" means the value determined by considering the earning or productive capacity, if any, the market value, if any, and all other matters that affect the actual value of the property to be assessed. This shall include, for purposes of arriving at the true and full value of property used for agricultural purposes, farm rentals, soil capability, soil productivity, and soils analysis.
16. "Unencumbered cash" means the total cash on hand in any fund, less the amount belonging to the fund in closed banks and less the amount of outstanding warrants, bills, accounts, and contracts which are chargeable against the fund.
17. There shall be a presumption that a unit of land is not a farm unless such unit contains a minimum of ten acres [4.05 hectares], and the taxing authority, in determining whether such presumption shall apply, shall consider such things as the present use, the adaptability to use, and how similar type properties in the immediate area are classified for tax purposes.

57-02-08.4. Conditional property tax exemption for owners of wetlands. Wetlands qualifying under this section are exempt from taxation. To qualify for the tax exemption, the owner of wetlands must annually file with the county director of tax equalization, on a form prescribed by the state tax commissioner, a legal description of the wetlands for which an exemption is claimed and an agreement to not drain, fill, pump, concentrate water in a smaller and deeper excavation in the wetland basin or alter the physical nature of the wetland in any manner that reduces the wetland's ability to function as a natural system during the year for which the exemption is claimed. To qualify for the exemption the agreement must be filed by June thirtieth of the year for which the exemption is claimed. The exemption is not available for years prior to filing of the agreement or for any year in which the terms of the agreement are violated. The county director of tax equalization shall certify to the county auditor, for each landowner receiving the exemption, the landowner's name, the amount of tax which would have been due on the exempt acreage for the most recent past tax year, and that the landowner has filed the required agreement. The amount of the wetlands exemption must be reflected upon the property tax statement of each eligible taxpayer.

For purposes of this section "wetlands" means all types 3, 4, and 5 wetlands, as determined by the agriculture commissioner and the director of the game and fish department, in accordance with United States fish and wildlife service circular no. 39 (1971 edition), drainage of which would be feasible and practical.

When wetlands are drained or altered so the land no longer qualifies for the exemption provided by this section, the land is subject to additional taxes which would have been assessed if the property had not qualified for the exemption provided by this section. The taxes which would have been due on the land without the exemption for the ten years preceding the year in which the exemption is

terminated must be computed, and the property owner shall pay the difference between this amount and the taxes which were actually paid on the property in addition to taxes currently due. Absence of water on property qualifying for the exemption under this section, caused by drought conditions, does not disqualify the property from the exemption under this section.

The wetlands tax exemption provided by this section does not grant the public any additional or greater right of access to the wetlands or diminish any right of ownership to the wetlands. The owner of property exempt under this section may use the property in any manner which does not violate the agreement filed with the county director of tax equalization.

No property is exempt under this section unless the tax commissioner has certified to the county auditor of each county by December tenth of the taxable year that funds are available in the state treasury which may be used for payment in full of any state obligations under section 57-02-08.5.

57-02-08.5. Wetlands tax exemption payment - Certification. Prior to November first of each year, the county auditor of each county shall certify to the state tax commissioner on forms prescribed by the commissioner the total amount of property tax which would have been due on property exempt under section 57-02-08.4 within the county and other information as may be prescribed by the commissioner. The county auditor shall forward to the commissioner copies of all agreements described in section 57-02-08.4 in effect in the county.

The commissioner shall audit the claims for exemption, make corrections as required, and certify to the state treasurer for payment to each county on or before June thirtieth of each year the sum of property taxes due on property exempt under section 57-02-08.4 for the county in the preceding year.

The county treasurer upon receipt of the payment from the state treasurer shall apportion and distribute it to the county and local taxing districts on the basis on which the general real estate tax for the preceding year is apportioned and distributed.

Supplemental certifications by the county auditor and the state tax commissioner and supplemental payments by the state treasurer may be made after the date prescribed in this section to make corrections as may be necessary.

No certifications must be made and no apportionment or distribution of payments to political subdivisions may be made under this section unless property was exempt under section 57-02-08.4 in the preceding year.

57-02-08.6. Authorization for receipt of funds. The state treasurer is authorized to receive funds for this program by legislative appropriation and by gift, grant, devise, or bequest of any money or property from any private or public source. Funds appropriated from any source for this purpose are not subject to section 54-44.1-11 and all income and moneys derived from the investment of the funds must be credited to the fund for this program. The director of the game and fish department, the agriculture commissioner, and the state engineer shall work with the governor, the United States fish and wildlife service, nonprofit conservation organizations, and any other public official or private organization or citizen to develop a source of funding to implement sections 57-02-08.4 and 57-02-08.5.

**CHAPTER 57-15
TAX LEVIES AND LIMITATION**

<u>Section</u>		<u>Page</u>
57-15-26.6	Water resource district's general tax levy	57-15: 1
57-15-26.8	Garrison Diversion Conservancy District general tax levy	57-15: 1

CHAPTER 57-15

TAX LEVIES AND LIMITATIONS

57-15-26.6. Water resource district's general tax levy. The board of directors of a water resource district shall estimate expenses of the district and transmit them to the board of county commissioners according to section 61-16.1-06. The board of county commissioners may, by resolution, levy and authorize the county auditor to extend upon the county or portion of the county in the district a tax not exceeding four mills on each dollar of taxable valuation in the county or portion of the county in the district.

57-15-26.8. Garrison Diversion Conservancy District general tax levy. The board of directors of the Garrison Diversion Conservancy District may levy a tax not exceeding one mill on the taxable valuation of property within the district according to sections 61-24-08 and 61-24-09.

CHAPTER 57-28

RIGHTS OF COUNTY WHEN LANDS NOT REDEEMED

57-28-09. Tax deed to be issued. After the date of foreclosure for property with an unsatisfied tax lien, the county auditor shall issue a tax deed to the county or, in cases in which the state engineer has made an assessment against the property under section 61-03-21.3, the county auditor shall issue a tax deed to the state or, if the property was sold by another political subdivision of this state within the ten years preceding the foreclosure, the county auditor shall issue a tax deed to that political subdivision. The tax deed passes the property in fee to the county, the state, or political subdivision, free from all encumbrances except installments of special assessments certified to the county auditor or which may become due after the service of the notice of foreclosure of tax lien, a homestead credit for special assessments lien provided for in section 57-02-08.3, and an easement or right of way recorded with an effective date that precedes the date of official notice to the record titleholder which states that property taxes are delinquent and constitute a property lien. While the county, the state, or political subdivision holds title under a tax deed, it is not liable for the payment of any installments of special assessments which become due unless the board of county commissioners, the state, or political subdivision has leased or contracted to sell the property. A deed issued under this section is prima facie evidence of the truth and regularity of all facts and proceedings before the execution of the deed.

**CHAPTER 57-51.1
OIL EXTRACTION TAX**

<u>Section</u>	<u>Page</u>
57-51.1-07 Allocation of moneys in oil extraction tax development fund	57-51.1: 1
57-51.1-07.1 Resources trust fund - Procedure for review of applications for financial assistance for water-related projects	57-51.1: 1
57-51.1-08 Intent	57-51.1: 2

CHAPTER 57-51.1

OIL EXTRACTION TAX

57-51.1-07. Allocation of moneys in oil extraction tax development fund. Moneys deposited in the oil extraction tax development fund must be apportioned quarterly by the state treasurer as follows:

1. Twenty percent must be allocated and credited to the sinking fund established for payment of the state of North Dakota water development bonds, southwest pipeline series, and any moneys in excess of the sum necessary to maintain the accounts within the sinking fund and for the payment of principal and interest on the bonds must be credited to a special trust fund, to be known as the resources trust fund. The resources trust fund must be established in the state treasury and the funds therein must be deposited and invested as are other state funds to earn the maximum amount permitted by law which income must be deposited in the resources trust fund. The principal and income of the resources trust fund may be expended only pursuant to legislative appropriation and are available to:
 - a. The state water commission for planning for and construction of water-related projects, including rural water systems. These water-related projects must be those which the state water commission has the authority to undertake and construct pursuant to chapter 61-02; and
 - b. The industrial commission for the funding of programs for development of energy conservation and renewable energy sources; for studies for development of cogeneration systems that increase the capacity of a system to produce more than one kind of energy from the same fuel; for studies for development of waste products utilization; and for the making of grants and loans in connection therewith.
2. Twenty percent must be allocated as provided in section 24 of article X of the Constitution of North Dakota.
3. Sixty percent must be allocated and credited to the state's general fund for general state purposes.

57-51.1-07.1. Resources trust fund - Procedure for review of applications for financial assistance for water-related projects.

1. A political subdivision or rural water system seeking loans, grants, or other financial assistance by legislative appropriation from the resources trust fund for a water-related project or study must submit the proposed water-related project or study to the state water commission for review. The commission may require the political subdivision or rural water system to supply information as it considers necessary to review the request. After consideration and review of the proposed water-related project or study, the state water commission may conduct or it may require the project sponsor to conduct a preliminary study for the proposed project or study. The preliminary study must be conducted in accordance with criteria established pursuant to subsection 3.
2. Every legislative bill appropriating moneys from the resources trust fund pursuant to subsection 1 must be accompanied by a state water commission report, which must include:
 - a. A summary of the engineering feasibility study of the proposed water project.
 - b. Statements concerning the proposed water project as it relates to the comprehensive state water plan of the state water commission.
 - c. The need for the proposed water project, including any alternative projects which would satisfy such need.
 - d. The availability of other sources of funding or financial assistance for such water project.

- e. A recommendation as to whether or not the proposed water project should receive financial assistance through legislative appropriation from the resources trust fund.
 - f. Other items as deemed necessary or appropriate by the state water commission.
3. The state water commission shall adopt rules for governing the review and recommendation of proposed water projects for which financial assistance by legislative appropriation from the resources trust fund is being sought under this section.

57-51.1-08. Intent. It is the intent of the electors of the state of North Dakota and the legislative assembly to fund public elementary and secondary education in North Dakota at the level of seventy percent of the educational cost per student, as determined under the provisions of chapter 15.1-27, to provide funds for the developmental center at westwood park, Grafton, and to provide for water development and utilization and energy conservation and development programs by enactment of an excise tax to be known as the "oil extraction tax" and enactment of an income tax credit.

The legislative assembly has determined that many areas within the state of North Dakota do not have adequate water supplies for municipal, domestic, livestock, light industrial, and other uses. However, adequate water supplies are essential for the social and economic stability of municipalities and rural areas. It is, therefore, declared to be in the best interest of the people of the state of North Dakota to establish a resources trust fund to be used to construct, or assist in the construction of, multiple-use water supply facilities. The legislative assembly also recognizes that appropriate planning to meet current and long-range water needs for the benefit of all of the citizens of the state of North Dakota is a matter of concern and high priority. The legislative assembly further intends that revenues, generated by use of any facilities constructed, in whole or in part, with financing from the resources trust fund, shall be deposited in the resources trust fund.

CHAPTER 61-01 GENERAL PROVISIONS

<u>Section</u>	<u>Page</u>
61-01-01 Waters of the state - Public waters.....	61-01: 1
61-01-01.1 [Repealed].....	61-01: 1
61-01-01.2 Findings and declaration of policy - Use of ground water for irrigation	61-01: 1
61-01-02 [Repealed].....	61-01: 1
61-01-03 Claims to the use of water initiated prior to and after March 1, 1905	61-01: 1
61-01-04 Eminent domain - Who may exercise.....	61-01: 1
61-01-05 Reclaiming waters turned into natural or artificial watercourse	61-01: 2
61-01-06 Watercourse - Definition.....	61-01: 2
61-01-07 Obstruction of watercourses - Penalty	61-01: 2
61-01-08 Obstructing navigation - Penalty	61-01: 2
61-01-09 Destruction of dams - Penalty	61-01: 2
61-01-10 [Repealed].....	61-01: 2
61-01-11 [Repealed].....	61-01: 2
61-01-12 [Repealed].....	61-01: 2
61-01-13 [Repealed].....	61-01: 2
61-01-14 [Repealed].....	61-01: 2
61-01-15 [Repealed].....	61-01: 2
61-01-16 Erection of guards when cutting ice - Penalty for failure to do so....	61-01: 2
61-01-17 Lawful to boom logs in navigable rivers	61-01: 2
61-01-18 [Repealed].....	61-01: 3
61-01-19 Right of way granted	61-01: 3
61-01-20 When special assessments shall become a lien	61-01: 3
61-01-21 Foreclosure of property where only special assessment is delinquent	61-01: 3
61-01-22 [Repealed].....	61-01: 3
61-01-23 Investigation or removal of obstructions in channel.....	61-01: 3
61-01-24 Mouse official name of river	61-01: 3
61-01-25 Penalty	61-01: 3
61-01-26 Declaration of state water resources policy.....	61-01: 3
61-01-26.1 Findings and declaration of policy - Water to eastern North North a critical priority - Water supplementation study - Employment of staff	61-01: 4
61-01-26.2 Statewide water development goals.....	61-01: 5
61-01-27 Procedure for converting mineral wells to water wells.....	61-01: 8

**TITLE 61
WATERS
CHAPTER 61-01
GENERAL PROVISIONS**

61-01-01. Waters of the state - Public waters. All waters within the limits of the state from the following sources of water supply belong to the public and are subject to appropriation for beneficial use and the right to the use of these waters for such use must be acquired pursuant to chapter 61-04:

1. Waters on the surface of the earth excluding diffused surface waters but including surface waters whether flowing in well-defined channels or flowing through lakes, ponds, or marshes which constitute integral parts of a stream system, or waters in lakes;
2. Waters under the surface of the earth whether such waters flow in defined subterranean channels or are diffused percolating underground water;
3. All residual waters resulting from beneficial use, and all waters artificially drained; and
4. All waters, excluding privately owned waters, in areas determined by the state engineer to be noncontributing drainage areas. A noncontributing drainage area is any area that does not contribute natural flowing surface water to a natural stream or watercourse at an average frequency more often than once in three years over the latest thirty-year period.

61-01-01.1. Reciprocal rights of riparian owners. Repealed by S.L. 1977, ch. 569, § 27.

61-01-01.2. Findings and declaration of policy - Use of ground water for irrigation. The legislative assembly finds that the use of ground water for irrigation purposes is vitally important to the economic future of this state. The reliance on processing plants for the consistent quality resulting from irrigation is an important factor in preserving this state's reputation for quality agricultural production. Therefore, it is declared necessary and in the public interest that the state by and through the state water commission strongly discourages the conversion of agricultural water permits to any other use. Further, the legislative assembly declares that any feasible or reasonable alternative supply of water be made available for municipal or domestic use to enable the continued use of ground water for irrigated agriculture and agricultural processing.

61-01-02. Right to use water - Basis - Waters appropriated for irrigation purposes - Priority in time. Repealed by S.L. 1977, ch. 569, § 27.

61-01-03. Claims to the use of water initiated prior to and after March 1, 1905. In all cases of claims to the use of water initiated prior to March 1, 1905, the right shall relate back to the initiation of the claim, upon the diligent prosecution to completion of the necessary surveys and construction for the application of the water to a beneficial use. All claims to the use of water initiated after March 1, 1905, shall relate back to the date of receipt of an application therefor in the office of the state engineer, subject to compliance with the applicable provisions of law, and the rules and regulations established thereunder.

61-01-04. Eminent domain - Who may exercise. The United States, or any person, corporation, limited liability company, or association may exercise the right of eminent domain to acquire for a public use any property or rights existing when found necessary for the application of water to beneficial uses, including the right to enlarge existing structures and use the same in common with the former owner. Any canal right of way so acquired shall be located so as to do

the least damage to private or public property, consistent with proper and economical engineering construction. Such property or rights may be acquired in the manner provided in chapter 32-15 and the North Dakota Rules of Civil Procedure.

61-01-05. Reclaiming waters turned into natural or artificial watercourse. Water turned into any natural or artificial watercourse by any party entitled to the use of such water may be reclaimed below and diverted therefrom by such party, subject to existing rights, due allowance for losses being made, as determined by the state engineer.

61-01-06. Watercourse - Definition. A watercourse entitled to the protection of the law is constituted if there is a sufficient natural and accustomed flow of water to form and maintain a distinct and a defined channel. It is not essential that the supply of water should be continuous or from a perennial living source. It is enough if the flow arises periodically from natural causes and reaches a plainly defined channel of a permanent character. If requested by a water resource board, the state engineer shall determine if a watercourse is constituted.

61-01-07. Obstruction of watercourses - Penalty. If any person illegally obstructs any ditch, drain, or watercourse, or diverts the water therein from its natural or artificial course, the person is liable to the party suffering injury from the obstruction or diversion for the full amount of the damage done, and, in addition, is guilty of a class B misdemeanor.

61-01-08. Obstructing navigation - Penalty. Every person who in any manner obstructs the free navigation of any navigable watercourse within this state is guilty of a misdemeanor.

61-01-09. Destruction of dams - Penalty. Every person who willfully destroys or tampers with any dam or structure erected to retain water or any embankment necessary for the support thereof, or who willfully makes or causes to be made, any aperture in such dam or embankment, with intent to destroy the same, is guilty of a class A misdemeanor.

61-01-10. Interference with piers or booms - Penalty. Repealed by S.L. 1975, ch. 106, § 673.

61-01-11. Removing or injuring piles - Penalty. Repealed by S.L. 1975, ch. 106, § 673.

61-01-12. Fouling waters with gas tar or other refuse - Penalty. Repealed by S.L. 1975, ch. 106, § 673; 1975, ch. 568, § 1.

61-01-13. Fouling public waters with dead animals or other refuse - Penalty. Repealed by S.L. 1975, ch. 106, § 673; 1975, ch. 568, § 1.

61-01-14. Fouling public water - What included. Repealed by S.L. 1975, ch. 568, § 1.

61-01-15. Riparian owners of land lying adjacent to nonnavigable streams. Repealed by S.L. 1959, ch. 408, § 2.

61-01-16. Erection of guards when cutting ice - Penalty for failure to do so. All persons cutting ice in or upon any waters within the boundaries of this state, for the purpose of removing such ice for sale or commercial use, shall surround the cuttings and openings made with fences or bushes or other guards sufficient to warn all persons of such cuttings and openings, and shall maintain the same until ice has formed again in such openings to a thickness of at least six inches [15.24 centimeters]. Any person violating this section may be prosecuted under section 12.1-17-03.

61-01-17. Lawful to boom logs in navigable rivers. Any person, having logs or lumber in any stream navigable for watercraft in this state, may boom such logs or lumber along the shore, and shall secure the boom by means of piles driven in the stream, or by chains, ropes,

timber, or traverse poles made fast at points along the shore. There shall be sufficient channel left clear at all times for the free passage of any craft usually navigating such stream.

61-01-18. State or municipalities may join water users' associations - Fee for recording articles by recorder. Repealed by S.L. 1975, ch. 106, § 673.

61-01-19. Right of way granted. A right of way is granted to any duly incorporated water users' association by and with the consent of the board of university and school lands, to construct over and across any state, school, and institution lands, flumes, ditches, and canals for irrigation purposes and to construct on such lands reservoirs for the storage of water for irrigation purposes.

61-01-20. When special assessments shall become a lien. As between vendor and vendee, all special assessments upon real property levied pursuant to the provisions of this title shall become and be a lien upon the real property upon which the same are assessed, from and after the first day of January next after such assessments shall have been certified and returned to the county auditor, to the amount so certified and returned, and no more.

61-01-21. Foreclosure of property when only special assessment is delinquent. If there are no delinquent general taxes against any parcel of real estate and it is foreclosed for special assessments under this title, the notice of foreclosure of tax lien shall contain a statement to the effect that the foreclosure is for special assessments. If the foreclosure is made only for special assessments levied by a municipality or by a taxing district other than the county, the county auditor shall issue a tax deed to the municipality or taxing district which levied such special assessments in the usual course of procedure.

61-01-22. Permit to drain waters required - Penalty. Repealed by S.L. 1981, ch. 632, § 11.

61-01-23. Investigation or removal of obstructions in channel. In order to investigate or remove obstructions from the channel or bed of any watercourse and thus prevent ice from gorging therein and to prevent flooding or pollution of such watercourse, the state water commission, any water resource district, any municipality, any board of county commissioners, and any federal agency authorized to construct works for prevention of damage by floods or for abatement of stream pollution, may enter upon lands lying adjacent to such watercourse to investigate or remove, or cause to be removed from the bed, channel, or banks of such watercourse obstructions which prevent or hinder the free flow of water or passage of ice therein. However, such entry upon adjacent lands must be by the most accessible route and the entering agency is responsible to the landowner for any damage.

61-01-24. Mouse official name of river. That body of water which enters the state in or adjacent to that township described as township one hundred sixty-four, north, range eighty-seven, west, in the county of Renville, and proceeds in a generally southerly course through the city of Minot, thence in a generally easterly and northerly course through the cities of Velva and Towner to a point in or adjacent to that township described as township one hundred sixty-four, north, range seventy-nine, west, in the county of Bottineau, at which point it leaves the state of North Dakota, shall be known as the "Mouse" river. Nothing herein shall be considered as invalidating any national or international agreements designating the river as the Souris.

61-01-25. Penalty. Any person violating any of the provisions of this chapter or any rule or regulation of the state engineer for which another penalty is not specifically provided is guilty of a class B misdemeanor.

61-01-26. Declaration of state water resources policy. In view of legislative findings and determination of the ever-increasing demand and anticipated future need for water in North Dakota for every beneficial purpose and use, it is hereby declared to be the water resources policy of the state that:

1. The public health, safety, and general welfare, including without limitation, enhancement of opportunities for social and economic growth and expansion, of all of the people of the state, depend in large measure upon the optimum protection, management, and wise utilization of all of the water and related land resources of the state.
2. Well-being of all of the people of the state shall be the overriding determinant in considering the best use, or combination of uses, of water and related land resources.
3. Storage of the maximum water supplies shall be provided wherever and whenever deemed feasible and practicable.
4. Accruing benefits from these resources can best be achieved for the people of the state through the development, execution, and periodic updating of comprehensive, coordinated, and well-balanced short-term and long-term plans and programs for the conservation and development of such resources by the departments and agencies of the state having responsibilities therefor. The plans and programs for the conservation and development of these resources may include implementation of a program to cost-share with local sponsors of water quality improvement projects.
5. Adequate implementation of such plans and programs shall be provided by the state through cost-sharing and cooperative participation with the appropriate federal and state departments and agencies and political subdivisions within the limitation of budgetary requirements and administrative capabilities, including consideration of cost-sharing for water quality improvement projects.
6. Required assurances of state cooperation and for meeting nonfederal repayment obligations of the state in connection with federal-assisted state projects shall be provided by the appropriate state department or agency.
7. Required assurances of local cooperation and for meeting nonfederal repayment obligations of local interests in connection with federal-assisted local projects may, at the request of political subdivisions or other local interests be provided by the appropriate state department or agency, provided, if for any reason it is deemed necessary by any department or agency of the state to expend state funds in order to fulfill any obligation of a political subdivision or other local interests in connection with the construction, operation, or maintenance of any such project, the state shall have and may enforce a claim against the political subdivision or other local interests for such expenditures.

The provisions of this section may not be construed in any manner to limit, impair, or abrogate the rights, powers, duties, or functions of any department or agency of the state having jurisdiction or responsibilities in the field of water and related land resources conservation, development, or utilization.

61-01-26.1. Findings and declaration of policy - Water to eastern North Dakota a critical priority - Water supplementation study - Employment of staff. The legislative assembly finds that many areas and localities in eastern North Dakota do not enjoy safe drinking water. It is also found that other areas and localities in eastern North Dakota do not have sufficient quantities of water to ensure a dependable, long-term water supply. The legislative assembly further finds that supplementation of the water resources of eastern North Dakota from other available sources, including the Missouri River, may be the only alternative to provide eastern North Dakota with a dependable source of safe, good quality water and an adequate quantity of water.

It is further declared that effective development and utilization of the land and water resources of this state; the opportunity for greater economic security; the protection of health, property, enterprise, and the preservation of the benefits from the land and water resources of

this state; and the promotion of the prosperity and general welfare of all of the people of North Dakota involve, necessitate, and require the exercise of the sovereign powers of the state and concern a public purpose. Therefore, in order to accomplish this public purpose, it is declared necessary that a means to supply and distribute water to the people of eastern North Dakota for all beneficial purposes must be developed. In furtherance of this public purpose, the supply and delivery of water to eastern North Dakota is established as a critical priority and the state water commission shall, in cooperation with the Garrison Diversion Conservancy District and the communities and rural water systems in eastern North Dakota, address this critical priority by developing a plan and estimate of the costs for supplementing the water resources of eastern North Dakota with water supplies from other available resources, including the Missouri River.

The state water commission may employ full-time personnel and may employ such other personnel as are necessary for the administration of this section as appropriated funds permit. Notwithstanding section 61-02-64.1, funds disbursed from the contract fund or appropriated for purposes of administering this section may be used for salaries and expenses of persons employed pursuant to this section.

61-01-26.2. Statewide water development goals. The legislative assembly will support to the extent funds are available from the water development trust fund the comprehensive statewide water development program developed pursuant to section 2 of chapter 587 of the 1995 Session Laws and to the state water management plan established under section 61-01-26. In order to implement the state water management plan, the legislative assembly will support the following:

1. During the 1999-2001 biennium:
 - a. Southwest pipeline project: Six million dollars in state funds and eleven million five hundred thousand dollars in federal funds, assuming Perkins County water system payment to the state water commission of four million five hundred thousand dollars.
 - b. Northwest area water supply project: Eight million two hundred thousand dollars in local funds and fourteen million eight hundred thousand dollars in federal funds, with an option being considered of the state water commission bonding the local cost-share with local repayment of the total principal, interest, and cost of issuance of the bonds to the state water commission.
 - c. Other municipal, rural, and industrial projects: Twenty-five million five hundred thousand dollars in local funds and thirty-nine million nine hundred thousand dollars in federal funds.
 - d. Grand Forks flood control: Twenty-five million dollars in local funds, twenty-five million dollars in state funds, and thirty-eight million five hundred thousand dollars in federal funds. The state total cost-share of fifty-two million dollars or so much of the total cost-share that is required may be bonded, requiring a loan repayment estimated at three million nine hundred thousand dollars per year with repayment beginning in 2001.
 - e. Devils Lake outlet to the Sheyenne River and to west Stump Lake: Seventeen million five hundred thousand dollars in state funds and thirty-two million five hundred thousand dollars in federal funds. The total state cost-share of seventeen million five hundred thousand dollars includes mitigation costs and will be bonded, requiring a local repayment estimated at one million five hundred thousand dollars per year, with the split between state and local loan repayment to be determined. Before bonds may be issued for a Devils Lake outlet, construction of the outlet must be approved by the state water commission.
2. During the 2001-03 biennium:

- a. Water to eastern North Dakota: Seventeen million dollars in federal funds appropriated under the Garrison Diversion Unit Reformulation Act of 1986 [Pub. L. 99-294; 100 Stat. 418], Dakota Water Resources Act of 1998, or other federal Act. The local cost has not been determined and will be determined after project configuration is complete.
 - b. Southwest pipeline project: Five hundred thousand dollars in local funds, one million seven hundred thousand dollars in state funds, and twelve million five hundred thousand dollars in federal funds.
 - c. Northwest area water supply project: Eight million seven hundred thousand dollars in local funds and sixteen million three hundred thousand dollars in federal funds.
 - d. Other municipal, rural, and industrial projects: Seventeen million seven hundred thousand dollars in local funds and thirty-two million eight hundred thousand dollars in federal funds.
 - e. Grand Forks flood control: Thirty-five million seven hundred thousand dollars in local funds, twenty-seven million dollars in state funds, and sixty-two million nine hundred thousand dollars in federal funds; annual bond payments of three million nine hundred thousand dollars. Components of the Grand Forks flood control project involve water treatment plant improvements. Those federal costs are reflected in subdivision d because of potential cost-sharing using Garrison diversion municipal, rural, and industrial funds. Other projects, such as greenway, are listed under subdivision g.
 - f. Devils Lake outlet to Sheyenne River and to west Stump Lake: Bond repayments of one million five hundred thousand dollars per year.
 - g. General projects: Thirty-one million seven hundred thousand dollars in local funds, twenty-five million nine hundred thousand dollars in state funds, and thirty-nine million eight hundred thousand dollars in federal funds.
3. During the 2003-05 biennium:
- a. Water to eastern North Dakota: Six million dollars in federal funds appropriated under the Garrison Diversion Unit Reformulation Act of 1986 [Pub. L. 99-294; 100 Stat. 418], Dakota Water Resources Act of 1998, or other federal Act. The local cost has not been determined and will be determined after project configuration is complete.
 - b. Southwest pipeline project: One million dollars in local funds, five million dollars in state funds, and eleven million four hundred thousand dollars in federal funds.
 - c. Northwest area water supply project: Eleven million eight hundred thousand dollars in local funds and twenty-one million eight hundred thousand dollars in federal funds.
 - d. Other municipal, rural, and industrial projects: Seventeen million seven hundred thousand dollars in local funds and thirty-two million eight hundred thousand dollars in federal funds.
 - e. Grand Forks flood control: Annual bond payments of three million nine hundred thousand dollars.
 - f. Devils Lake outlet to Sheyenne River and to west Stump Lake: Bond repayments of one million five hundred thousand dollars per year.

- g. General projects: Twenty-four million dollars in local funds, eighteen million four hundred thousand dollars in state funds, and five million five hundred thousand dollars in federal funds.
- 4. During the 2005-07 biennium:
 - a. Water to eastern North Dakota: Eighty-four million dollars in federal funds appropriated under the Garrison Diversion Unit Reformulation Act of 1986 [Pub. L. 99-294; 100 Stat. 418], Dakota Water Resources Act of 1998, or other federal Act. The local cost has not been determined and will be determined after project configuration is complete.
 - b. Southwest pipeline project: One million dollars in local funds, nine million five hundred thousand dollars in state funds, and nineteen million five hundred thousand dollars in federal funds.
 - c. Northwest area water supply project: Five million eight hundred thousand dollars in local funds and ten million nine hundred thousand dollars in federal funds.
 - d. Other municipal, rural, and industrial projects: Seventeen million seven hundred thousand dollars in local funds and thirty-two million eight hundred thousand dollars in federal funds.
 - e. Grand Forks flood control: Annual bond payments of three million nine hundred thousand dollars.
 - f. Devils Lake outlet to Sheyenne River and to west Stump Lake: Bond repayments of one million five hundred thousand dollars per year.
 - g. General projects: Twenty-four million dollars in local funds, eighteen million four hundred thousand dollars in state funds, and five million five hundred thousand dollars in federal funds.
- 5. During the 2007-09 biennium:
 - a. Water to eastern North Dakota: Fifty-nine million dollars in federal funds appropriated under the Garrison Diversion Unit Reformulation Act of 1986 [Pub. L. 99-294; 100 Stat. 418], Dakota Water Resources Act of 1998, or other federal Act. The local cost has not been determined and will be determined after project configuration is complete.
 - b. Northwest area water supply project: Three million seven hundred thousand dollars in local funds and seven million dollars in federal funds.
 - c. Other municipal, rural, and industrial projects: Seventeen million seven hundred thousand dollars in local funds and thirty-two million eight hundred thousand dollars in federal funds.
 - d. Grand Forks flood control: Annual bond repayments of three million nine hundred thousand dollars.
 - e. Devils Lake outlet to Sheyenne River and to west Stump Lake: Bond repayments of one million five hundred thousand dollars per year.
 - f. General projects: Twenty-four million dollars in local funds, eighteen million four hundred thousand dollars in state funds, and five million five hundred thousand dollars in federal funds.

6. During the 2009-11 biennium:

- a. Water to eastern North Dakota: Two million dollars in federal funds appropriated under the Garrison Diversion Unit Reformulation Act of 1986 [Pub. L. 99-294; 100 Stat. 418], Dakota Water Resources Act of 1998, or other federal Act. The local cost has not been determined and will be determined after project configuration is complete.
- b. Northwest area water supply project: One million seven hundred thousand dollars in local funds and three million three hundred thousand dollars in federal funds.
- c. Other municipal, rural, and industrial projects: Seventeen million seven hundred thousand dollars in local funds and thirty-two million eight hundred thousand dollars in federal funds.
- d. Grand Forks flood control: Annual bond repayments of three million nine hundred thousand dollars.
- e. Devils Lake outlet to Sheyenne River and to west Stump Lake: Bond repayments of one million five hundred thousand dollars per year.
- f. General projects: Twenty-four million dollars in local funds, eighteen million four hundred thousand dollars in state funds, and five million five hundred thousand dollars in federal funds.

7. Beyond the year 2011:

- a. Water to eastern North Dakota: The local cost has not been determined and will be determined after project configuration is complete.
- b. Northwest area water supply project: Eight million seven hundred thousand dollars in local funds and sixteen million three hundred thousand dollars in federal funds.
- c. Other municipal, rural, and industrial projects: One hundred thirty million two hundred thousand dollars in local funds and two hundred forty-one million two hundred thousand dollars in state funds. The anticipated three hundred forty-five million dollars in federal cost-share has been used in the previous bienniums and the remaining cost-share for projects has been identified as a potential state cost-share.
- d. Grand Forks flood control: A total of fifty-eight million five hundred thousand dollars in bond repayments is anticipated.
- e. Devils Lake outlet to Sheyenne River and to west Stump Lake: A total of fifteen million dollars in bond repayments.
- f. General projects: Two hundred twenty million two hundred thousand dollars in local funds, one hundred fifty-six million four hundred thousand dollars in state funds, and thirty-four million three hundred thousand dollars in federal funds.

61-01-27. Procedure for converting mineral wells to water wells. In order to protect the public's health, safety, and welfare and to protect this state's ground water supplies, and except for purposes related to chapters 38-08 and 38-08.1, no well that has been drilled for the purpose of the exploration or production of oil or gas may be converted to a water well without first obtaining approval from the industrial commission. Any person who converts an exploration or production well to a water well without first obtaining approval from the industrial commission

is guilty of a class A misdemeanor and shall be required to close the well in accordance with state standards and bear all costs associated with the closure.

CHAPTER 61-02 WATER COMMISSION

<u>Section</u>	<u>Page</u>
61-02-01 Water conservation, flood control, management, and development declared a public purpose.....	61-02: 1
61-02-01.1 Statewide water development program.....	61-02: 1
61-02-02 Definitions	61-02: 1
61-02-03 Apportioning or allocating water rights by commission.....	61-02: 2
61-02-04 State water commission - Members - Terms - Qualifications	61-02: 2
61-02-04.1 Conflict of interest	61-02: 2
61-02-05 Chairman of commission.....	61-02: 2
61-02-06 Principal and branch offices of commission	61-02: 3
61-02-07 Quorum - What constitutes	61-02: 3
61-02-08 Meetings of commission	61-02: 3
61-02-09 Commission a public corporation - Function as state	61-02: 3
61-02-10 Commission to have seal - Judicial notice	61-02: 3
61-02-11 Commission may adopt rules and regulations - Record kept by commission - Inspection	61-02: 3
61-02-12 Compensation and expenses of appointive members of commission.....	61-02: 3
61-02-13 Employment of assistants	61-02: 3
61-02-14 Powers and duties of the commission	61-02: 3
61-02-14.1 Release or assignment of easements - Procedure	61-02: 5
61-02-15 [Repealed].....	61-02: 5
61-02-16 Preference is given to individual farmer or irrigation district when planning or constructing irrigation projects	61-02: 5
61-02-17 Records, accounts, and statements of works and projects undertaken - Filed with office of management and budget	61-02: 5
61-02-18 Application for irrigation project - Fees to accompany - Surveys made.....	61-02: 5
61-02-19 Works of commission may include preparation of land for irrigation when project undertaken by commission.....	61-02: 6
61-02-20 [Repealed].....	61-02: 6
61-02-21 [Repealed].....	61-02: 6
61-02-22 Acquisition of necessary property and power of condemnation	61-02: 6
61-02-23 Actions to acquire property rights	61-02: 6
61-02-23.1 Condemnation by the water commission	61-02: 7
61-02-23.2 Devils Lake outlet - Eminent domain - Design and build construction	61-02: 7
61-02-23.3 Construction and operation of the Devils Lake outlet - Authorization - Agreement	61-02: 7
61-02-24 Cooperation and coordination with all existing agencies.....	61-02: 8
61-02-24.1 Cooperation and participation of political subdivisions	61-02: 8
61-02-24.2 Payments in lieu of real estate taxes.....	61-02: 8

61-02-25	Duties of state agencies acting through interstate compacts or agreements.....	61-02: 8
61-02-26	Duties of state agencies concerned with intrastate use or disposition of waters	61-02: 8
61-02-27	Proposals with respect to use or disposition of waters to be presented to state engineer	61-02: 9
61-02-28	Plans, investigations, and surveys concerning use of waters - Special powers of commission.....	61-02: 9
61-02-29	Commission to have full control over unappropriated public waters of state	61-02: 9
61-02-30	Commission acquiring water rights and administering provisions of chapter - Declaration of intention	61-02: 9
61-02-31	[Repealed].....	61-02: 9
61-02-32	Modification of plans by commission regarding project to appropriate waters - Filing declaration of intention	61-02: 9
61-02-33	Commission to file declaration of completion of appropriation with state engineer.....	61-02: 10
61-02-34	Declaration of intention to appropriate or release waters or completion of appropriation as evidence	61-02: 10
61-02-35	When right of commission to waters attaches - Continuation of authority and jurisdiction	61-02: 10
61-02-36	Natural streams employed as a means of diversion of water - Adopting methods to determined natural flow.....	61-02: 10
61-02-37	Headgates and measuring devices maintained by appropriators of natural streams - Commission adopting rules preventing diversion of water.....	61-02: 10
61-02-38	Holder of water right on natural stream may turn control over to commission.....	61-02: 10
61-02-39	Commission may adjust plans and operation of project to obtain financial aid from United States	61-02: 10
61-02-40	Authority of commission to extend and be applied to natural waters of state	61-02: 10
61-02-41	Surveys for the diversion of waters	61-02: 10
61-02-42	Commission to take into consideration decrees of court adjudicating waters of natural stream	61-02: 11
61-02-43	Commission may hold hearings relating to rights of claimants - Notice - Findings made.....	61-02: 11
61-02-44	Controlling natural flow of stream deemed police power - Water commissioners not to deprive commission.....	61-02: 11
61-02-45	Commission may divert at any place on stream after impounding or acquiring the right of appropriation	61-02: 11
61-02-46	Commission may issue bonds - Legislative authorization - Payment restricted.....	61-02: 11
61-02-47	When bonds to mature - Callable before maturity	61-02: 12
61-02-48	Commission to determine interest rate, form, denomination, and execution of bonds.....	61-02: 12

61-02-49	Officers whose names are on bonds ceasing to be officers before delivery of bonds - Validity of bonds	61-02: 12
61-02-50	[Repealed]	61-02: 12
61-02-51	How bonds may be secured	61-02: 12
61-02-52	Commission may provide for registration of bonds	61-02: 12
61-02-53	Issuance and sale of bonds - Proceeds from sale - Use	61-02: 12
61-02-54	Resolution providing for issuance of bonds	61-02: 12
61-02-55	Issuance of temporary bonds	61-02: 12
61-02-56	Bond guaranty or insurance - Method	61-02: 12
61-02-57	Moneys appropriated to pay interest and principal of bonds available as a revolving fund	61-02: 13
61-02-58	Lien upon bond proceeds	61-02: 13
61-02-59	Series of bonds may be secured by trust indenture	61-02: 13
61-02-60	Trust indentures - Where filed - Filing constitutes constructive notice	61-02: 13
61-02-61	Resolution or indenture may contain provisions protecting bondholders - Expenses incurred in carrying out indenture	61-02: 13
61-02-62	Powers of commission in issuance of bonds	61-02: 13
61-02-63	Mortgage of commission - Contents - Purchaser at foreclosure sale - Rights	61-02: 15
61-02-64	Funds created by commission - Depository	61-02: 15
61-02-64.1	Contract fund - Purpose - Reimbursement to be deposited with the state treasurer	61-02: 15
61-02-64.2	Repayment of loan proceeds and reimbursements deposited in resources trust fund	61-02: 15
61-02-65	Commission to have complete system of accounting - Contents ...	61-02: 15
61-02-66	[Repealed]	61-02: 15
61-02-67	[Repealed]	61-02: 15
61-02-67.1	Revenues and funds available to pay bonds	61-02: 15
61-02-68	[Repealed]	61-02: 16
61-02-68.1	Borrowing on interim notes - Expenses paid and loans made from proceeds - Issuance of notes	61-02: 16
61-02-68.2	Interim financing notes guaranteed by United States agency or instrumentality - Limitations	61-02: 16
61-02-68.3	Interim financing - Proper authority required	61-02: 16
61-02-68.4	Interim financing - Independent review of feasibility of project	61-02: 16
61-02-68.5	Interim financing - Proceeds pledged as security - Assignment to commission of rights to proceeds	61-02: 16
61-02-68.6	Terms of interim financing notes - Extension of maturity dates	61-02: 17
61-02-68.7	Pledge of revenues to secure interim financing notes	61-02: 17
61-02-68.8	Additional covenants and conditions to secure interim financing notes	61-02: 17
61-02-68.9	Registration of interim financing notes - Interest payment - Redemption prior to maturity	61-02: 17
61-02-68.10	Execution and attestation of interim financing notes - Sale	61-02: 17
61-02-68.11	Bond provisions applicable to interim financing notes	61-02: 17

61-02-68.12	Interim financing notes or guarantees not a state obligation - Payment restricted to revenues - Notes or guarantees not a lien	61-02: 17
61-02-68.13	Interim financing notes as legal investments and security	61-02: 18
61-02-68.14	Guarantee issued by commission	61-02: 18
61-02-68.15	Pledges	61-02: 18
61-02-68.16	Reserve fund	61-02: 18
61-02-68.17	Additional reserves and funds	61-02: 19
61-02-68.18	Protection of service during term of guarantee or loan	61-02: 19
61-02-68.19	Interim financing notes, guarantees, or bonds for municipal, rural, and industrial water supply projects - Public interest	61-02: 20
61-02-69	Property of commission exempt from taxation	61-02: 20
61-02-70	[Repealed]	61-02: 20
61-02-71	Commission may accept and receive appropriations and contributions	61-02: 20
61-02-72	Revenue bonds of commission are legal and valid investments of financial institutions - Exemption from taxation	61-02: 20
61-02-73	Construction of chapter	61-02: 20
61-02-74	[Repealed]	61-02: 20
61-02-75	[Repealed]	61-02: 20
61-02-76	Hearing - Appeals from decision of commission	61-02: 20
61-02-77	Emergency municipal, tribal, and rural water system drinking water grant program	61-02: 21

CHAPTER 61-02 WATER COMMISSION

61-02-01. Water conservation, flood control, management, and development declared a public purpose. It is hereby declared that the general welfare and the protection of the lives, health, property, and the rights of all the people of this state require that the conservation, management, development, and control of waters in this state, public or private, navigable or unnavigable, surface or subsurface, the control of floods, and the management of the atmospheric resources, involve and necessitate the exercise of the sovereign powers of this state and are affected with and concern a public purpose. It is declared further that any and all exercise of sovereign powers of this state in investigating, constructing, maintaining, regulating, supervising, and controlling any system of works involving such subject matter embraces and concerns a single object, and that the state water commission in the exercise of its powers, and in the performance of all its official duties, shall be considered and construed to be performing a governmental function for the benefit, welfare, and prosperity of all the people of this state.

61-02-01.1. Statewide water development program. The legislative assembly finds that there is a critical need to develop a comprehensive statewide water development program. The state water commission shall develop and implement a comprehensive statewide water development program. The commission shall design the program to serve the long-term water resource needs of the state and its people and to protect the state's current usage of, and the state's claim to, its proper share of Missouri River water.

61-02-02. Definitions. In this chapter, unless the context or subject matter otherwise requires:

1. "Commission" shall mean the state water commission.
2. "Cost of works" shall include:
 - a. The cost of construction, the cost of all lands, property rights, water rights, easements, and franchises acquired which are deemed necessary for such construction;
 - b. The cost of all water rights acquired or exercised by the commission in connection with such works;
 - c. The cost of all machinery and equipment, financing charges, interest prior to and during construction and for a period not exceeding three years after the completion of construction;
 - d. The cost of engineering and legal expenses, plans, specifications, surveys, estimates of cost, and other expenses necessary or incident to determining the feasibility or practicability of any project;
 - e. Administrative expenses;
 - f. The construction of the works and the placing of the same in operation; and
 - g. Such other expenses as may be necessary or incident to the financing authorized in this chapter, including, but not limited to, funding of debt service, repair and replacement reserves, capitalized interest, and the payment of bond issuance costs.
3. "Owner" shall include all individuals, associations, corporations, limited liability companies, districts, municipalities, and other political subdivisions of this state having any title or interest in any properties, rights, water rights, easements, or franchises to be acquired.

4. "Project" shall mean any one of the works defined in subsection 5, or any combination of such works, which are physically connected or jointly managed and operated as a single unit.
5. "Works" shall be deemed to include:
 - a. All property rights, easements, and franchises relating thereto and deemed necessary or convenient for their operation;
 - b. All water rights acquired and exercised by the commission in connection with such works;
 - c. All means of conserving and distributing water, including without limiting the generality of the foregoing two subdivisions, reservoirs, dams, diversion canals, distributing canals, channels, lateral ditches, pumping units, mains, pipelines, treatment plants, and waterworks systems; and
 - d. All works for the conservation, control, development, storage, treatment, distribution, and utilization of water including, without limiting the generality of the foregoing subdivisions, works for the purpose of irrigation, flood control, watering stock, supplying water for public, domestic, industrial, and recreational use, fire protection, and the draining of lands injured or in danger of injury as a result of such water utilization.

61-02-03. Apportioning or allocating water rights by commission. In case any water rights shall be acquired or exercised by the commission in connection with two or more works and projects, the commission, by resolution, shall apportion or allocate to each of such works or projects such part of such water rights as it may determine, and upon adoption of such a resolution, such water rights shall be deemed to be a part of each of such works and projects to the extent that such water rights have been so apportioned or allocated thereto respectively.

61-02-04. State water commission - Members - Terms - Qualifications. The state water commission shall consist of the governor, agriculture commissioner, and seven other members to be appointed by the governor who shall take into account reasonable geographic considerations in making such appointments. The governor or the agriculture commissioner, or both, may appoint a representative to serve in that official's capacity at such meetings as that official may be unable to attend. The seven appointive members of the commission must be appointed for a term of six years each with their terms of office so arranged that two terms and not more than three terms expire on the first day of July of each odd-numbered year. Each appointive member must be a qualified elector of the state and is subject to removal by judicial procedure. In case of a vacancy, the vacancy must be filled by appointment by the governor for the remainder of the unexpired term. Before entering upon the discharge of official duties, each appointive member shall take, subscribe, and file with the secretary of state the oath prescribed for civil officers.

61-02-04.1. Conflict of interest.

1. A member of the commission who has a direct or indirect personal or pecuniary interest in a matter before the commission must disclose that fact to the commission and may not participate in or vote on that particular matter.
2. Sections 12-1-13-02, 12-1-13-03, and 48-01-2-08 do not apply to contracts in which a member of the commission is directly or indirectly interested if the requirements of subsection 1 have been met.

61-02-05. Chairman of commission. The governor shall be the chairman of the commission. The governor shall designate a vice chairman who shall be a member of the commission. The state engineer shall be the secretary of the commission.

61-02-06. Principal and branch offices of commission. The commission shall maintain its principal office in the city of Bismarck and may maintain such branch offices in the state as it may determine.

61-02-07. Quorum - What constitutes. A majority of the members of the commission shall constitute a quorum, and the affirmative or negative vote of five members shall be necessary to bind the commission except for adjournment.

61-02-08. Meetings of commission. The commission may hold meetings at such times and places as it, by resolution, may provide. The chairman, or in the chairman's absence or disability, the vice chairman of the commission, may issue a call for any meeting at any time. The governor, as chairman, shall preside at all meetings of the commission and in case of the governor's absence or disability the vice chairman shall preside.

61-02-09. Commission a public corporation - Function as state. The commission shall be a public corporation with all of the powers and authority possessed by such a corporation in the performance of its duties. The commission may sue and be sued, plead and be impleaded, and contract and be contracted with, in its corporate name. The commission in the exercise of all its powers and in the performance of all its duties shall be the state of North Dakota functioning in its sovereign and governmental capacity.

61-02-10. Commission to have seal - Judicial notice. The commission shall have a seal bearing its name. Such seal shall be affixed to such records and other instruments as the commission may direct, and all courts shall take judicial notice thereof.

61-02-11. Commission may adopt rules and regulations - Record kept by commission - Inspection. The commission may adopt and enact all rules, regulations, resolutions, and bylaws deemed suitable and necessary in the conduct of its business and the performance of its duties. It shall keep accurate minutes and records of all its acts which at all reasonable times shall be open for public inspection and which it may cause to be published as it may deem desirable.

61-02-12. Compensation and expenses of appointive members of commission. Each appointive member of the commission is entitled to receive sixty-two dollars and fifty cents compensation per day and must be reimbursed for expenses in the amounts provided in sections 44-08-04 and 54-06-09 while attending meetings of the commission or, at the discretion of the member, may receive either per diem compensation or expenses in those amounts while otherwise engaged in official business of the commission, including time of travel between home and the place at which the member performs such duties.

61-02-13. Employment of assistants. The commission may hire and employ all necessary aid, help, and assistants, including members of all the professions, for the efficient performance of its powers and duties.

61-02-14. Powers and duties of the commission. The commission shall have full and complete power, authority, and general jurisdiction:

1. To investigate, plan, regulate, undertake, construct, establish, maintain, control, operate, and supervise all works, dams, and projects, public and private, which in its judgment may be necessary or advisable:
 - a. To control the low-water flow of streams in the state.
 - b. To impound water for the improvement of municipal, industrial, and rural water supplies.
 - c. To control and regulate floodflow in the streams of the state to minimize the damage of such floodwaters.

- d. To conserve and develop the waters within the natural watershed areas of the state and, subject to vested rights, to divert the waters within a watershed area to another watershed area and the waters of any river, lake, or stream into another river, lake, or stream.
 - e. To improve the channels of the streams for more efficient transportation of the available water in the streams.
 - f. To provide sufficient water flow for the abatement of stream pollution.
 - g. To develop, restore, and stabilize the waters of the state for domestic, agricultural, and municipal needs, irrigation, flood control, recreation, and wildlife conservation, by the construction and maintenance of dams, reservoirs, and diversion canals.
 - h. To promote the maintenance of existing drainage channels in agricultural lands and to construct any needed channels.
 - i. To provide more satisfactory subsurface water supplies for the municipalities of the state.
 - j. To finance the construction, establishment, operation, and maintenance of public and private works, dams, and irrigation projects, which in its judgment may be necessary and advisable.
 - k. To provide for the storage, development, diversion, delivery, and distribution of water for the irrigation of agricultural land and supply water for municipal and industrial purposes.
 - l. To provide for the drainage of lands injured by or susceptible of injury from excessive rainfall or from the utilization of irrigation water, and subject to the limitations prescribed by law, to aid and cooperate with the United States and any department, agency, or officer thereof, and with any county, township, drainage district, or irrigation district of this state, or of other states, in the construction or improvement of such drains.
 - m. To provide water for stock.
 - n. To provide water for the generation of electric power and for mining and manufacturing purposes.
2. To define, declare, and establish rules and regulations:
- a. For the sale of waters and water rights to individuals, associations, corporations, limited liability companies, municipalities, and other political subdivisions of the state and for the delivery of water to users.
 - b. For the full and complete supervision, regulation, and control of the water supplies within the state.
 - c. Repealed by S.L. 1975, ch. 575, § 2.
 - d. Governing and providing for financing by local participants to the maximum extent deemed practical and equitable in any water development project in which the state participates in cooperation with the United States or with political subdivisions or local entities.
3. To exercise full power and control of the construction, operation, and maintenance of works and the collection of rates, charges, and revenues realized therefrom.

4. To sell, lease, and otherwise distribute all waters which may be developed, impounded, and diverted by the commission under the provisions of this chapter, for the purpose of irrigation, the development of power, and the watering of livestock, and for any other private or public use.
5. To exercise all express and implied rights, power, and authority that may be necessary, and to do, perform, and carry out all of the expressed purposes of this chapter and all of the purposes reasonably implied incidentally thereto or lawfully connected therewith.
6. To acquire, own, and develop lands for irrigation and water conservation and to acquire, own, and develop damsites and reservoir sites and to acquire easements and rights of way for diversion and distributing systems.
7. To cooperate with the United States and any department, agency, or officer thereof in the planning, establishment, operation, and maintenance of dams, reservoirs, diversion and distributing systems, for the utilization of the waters of the state for domestic, municipal, and industrial needs, irrigation, flood control, water conservation, generation of electric power and for mining, agricultural and manufacturing purposes, and in this connection the state water commission is hereby authorized, within the limitations prescribed by law, to acquire, convey, contribute, or grant to the United States, moneys, real and personal property, including land or easements for dams and reservoir sites and rights of way and easements for diversion and distribution systems or participate in the cost of any project.
8. To consider cost-sharing for water quality improvement projects.

61-02-14.1. Release or assignment of easements - Procedure. The commission may, when it deems such action to be in the best interests of the state, for good and valuable consideration, release easements granted to the state for the construction, operation, and maintenance of dams, along with access thereto, if such dams have not been constructed within ten years of the granting of the easement or if such dams are no longer useful. The commission may also assign such easements to a political subdivision if it determines the assignment would be in the best interests of the state. Any release or assignment shall be in the name of the state of North Dakota by the governor and attested by the secretary of state.

61-02-15. Provisions of chapter not to limit or deprive state department of health of authority. Repealed by S.L. 1975, ch. 575, § 2.

61-02-16. Preference is given to individual farmer or irrigation district when planning or constructing irrigation projects. In planning and constructing irrigation projects, it shall be the policy of the commission to give preference to the individual farmer or groups of farmers or irrigation districts who intend to farm the land themselves.

61-02-17. Records, accounts, and statements of works and projects undertaken - Filed with office of management and budget. The commission shall keep full and complete accounts and records of all matters and things relating to works and projects undertaken, established, and maintained by the commission and shall prepare annual balance sheets, income, and profit and loss statements, showing the financial condition of each project, and shall file copies thereof with the office of management and budget for public inspection at all reasonable times by any interested parties or citizens of the state.

61-02-18. Application for irrigation project - Fees to accompany - Surveys made. Upon application by any landowner, holder of any easement, or holder of any lease of five or more years' duration, or of any group or association of such landowners, easement holders, or leaseholders for an irrigation project, the commission shall make such preliminary engineering, soil survey, and other investigations as may be necessary to determine the feasibility of any such proposed project. Such applicant shall submit with the application such fees as the commission

shall establish for projects of different classes. Following such preliminary survey and upon further application by the applicant, the commission shall enter into a contract with such applicant for a complete engineering, soil survey, and other investigations of said project. The soil survey shall meet such standards as are prescribed by the bureau of chemistry and soils of the federal government and the North Dakota state university of agriculture and applied science. The engineering survey shall be of sufficient detail and quality to enable the applicant to comply with the requirements for obtaining a permit to appropriate water, and to enable any competent contractor to estimate costs and quantities of material needed within reasonable limits, and to install such project without further engineering service. The contract for such engineering service between the applicant and the commission shall require the commission to pay not more than seventy-five percent of the cost of such detailed engineering survey and the drawing of the necessary plans and specifications, with not less than twenty-five percent to be paid by the applicant.

61-02-19. Works of commission may include preparation of land for irrigation when project undertaken by commission. In any irrigation project undertaken by the commission serving a single individual, or a group of individuals owning irrigable lands, the works of the commission may include preparation of the land for irrigation.

61-02-20. Approval of commission necessary before constructing certain size dams - Inspection during construction. Repealed by S.L. 1981, ch. 365, § 8.

61-02-21. Sewage and waste disposal or discharge - Water supply plant - Approval of commission required. Repealed by S.L. 1975, ch. 575, § 2.

61-02-22. Acquisition of necessary property and power of condemnation. The commission has full power and authority to acquire by purchase or exchange, upon such terms and conditions as the commission determines necessary and proper, and by condemnation in accordance with and subject to chapter 32-15 and the provisions of all laws applicable to the condemnation of property for public use, any lands, rights, water rights of whatever character, easements, franchises, and other property determined necessary or proper for the construction, operation, and maintenance of works. This chapter does not require the commission, in condemning any riparian water right, to condemn also the riparian land to which such right may be incident. The title to all property purchased, acquired, or condemned must be taken in the name of the commission and held in trust for, and for the use and benefit of, the people of this state.

61-02-23. Actions to acquire property rights. The commission shall have full power and authority:

1. To institute, maintain, and prosecute to final determination in any of the courts of this or any other state, or in any of the federal courts, any and all actions, suits, and special proceedings that may be necessary:
 - a. To enable it to acquire, own, and develop lands for irrigation and water conservation, water distribution, and other necessary purposes. The commission may sell such lands upon such terms and conditions as it may prescribe and may own and hold title to lands for damsites, reservoir sites, water rights, easements, and rights of way for diversion and distributing systems, lateral ditches, and other means for the distribution of waters in this state, and for any other necessary purposes.
 - b. To adjudicate all water rights upon any stream, watercourse, or source of water supply from which are derived the waters for such reservoir, diversion and distributing systems, lateral ditches, and other means of distribution.
2. To join in any action any and all owners of vested water rights acquired by any person, association, corporation, or limited liability company, so that adjudication may be had of all surplus water upon all of the watercourses and sources, water

supplies or any project constructed under the supervision and control of the commission.

3. To join all persons interested as parties in all actions or condemnation proceedings affecting the title of, or holding liens upon, the property sought to be acquired as disclosed by the public records, and the court in such actions or special proceedings shall implead all parties necessary for a full and final determination of all issues upon their merits for the partition and distribution of damages awarded. In the event of controversy between such parties, the court may direct the amount of damages awarded to be paid in or deposited with the clerk of court to abide the result of further appropriate proceedings either in law or in equity. The taking possession of property sought to be condemned shall not be delayed by reason of any dispute between rival claimants or the failure to join any of them as parties to such action or condemnation proceedings.

61-02-23.1. Condemnation by the water commission. Whenever a right of way is to be taken by condemnation proceedings for any purpose authorized by chapters 61-24.3 or 61-24.6, the commission may take possession of the right of way after making a written offer to purchase and depositing the amount of the offer with the clerk of the district court of the county wherein the right of way is located. The clerk shall immediately notify the property owner in writing of the deposit. Within thirty days after receiving notice, the property owner may appeal to the district court by serving notice of appeal upon the water commission and the matter must be tried at the next term of court with a jury, unless a jury is waived, in the manner prescribed for trials under chapter 32-15.

61-02-23.2. Devils Lake outlet - Eminent domain - Design and build construction. In the construction of an outlet from Devils Lake, the commission:

1. Shall make a reasonable and diligent effort to acquire the property interests needed by negotiation. The commission is deemed to have made a reasonable and diligent effort if it has contacted or attempted to contact the owner of the property interest needed at least three times over a thirty-day period. If the commission is unable to acquire the interest needed by negotiation, then it may take possession of the interests needed after making a written offer to purchase and depositing the amount of the offer with the clerk of the district court of the county in which the property interest is located. The amount of the offer must be at least the average value per acre of comparable property. The clerk shall immediately notify the property owner in writing of the deposit. Within thirty days after receiving notice, the property owner may appeal to district court by serving notice of appeal upon the commission and the matter must be tried in the manner prescribed under chapter 32-15.
2. May issue, when it determines that it would be advantageous to the state or that it is necessary in order to construct the outlet in a timely manner, a request for proposals to design and build the outlet. The request for proposals must require that each proposal submitted contain a single price that includes the cost to design and build the outlet. Neither chapter 48-01.2 or 54-44.7, nor any other law requiring competitive bidding applies to the construction of the outlet if the commission determines to use the design and build procedure. The commission shall select the proposal that it determines is the most advantageous to the state.

61-02-23.3. Construction and operation of the Devils Lake outlet - Authorization - Agreement. The state water commission may do all things reasonably necessary to construct an outlet from Devils Lake, including executing an agreement with the federal government wherein the state water commission agrees to hold the United States harmless and free from damages, except for damages due to the fault or negligence of the United States or its contractors. The state engineer may employ full-time personnel and may employ such other personnel as are necessary for the operation and maintenance of the Devils Lake outlet within the limits of legislative appropriations for that purpose. Notwithstanding section 61-02-64.1, funds disbursed from the contract fund and appropriated for the purposes of this section may be

used for salaries, equipment, operations, and maintenance costs relating to the Devils Lake outlet.

61-02-24. Cooperation and coordination with all existing agencies. The commission may investigate, plan, cooperate, and make all contracts or compacts necessary or requisite:

1. With the United States and any department, agency, or officer thereof.
2. With the states of Minnesota, South Dakota, Montana, and Wyoming, or any political subdivision thereof, and with any other state, and with any department or officer or political subdivision of any state.
3. With Canada or any of its provinces, and with any agency, department, or officer of Canada or any of its provinces.

The powers granted by this section shall extend to all waters, whether considered as intrastate, interstate, or international. The commission is specially authorized and empowered to cooperate with the United States or any of its agencies concerned with investigating, planning, conserving, utilizing, developing, and handling water in any form for purposes of water conservation, flood control, prevention of water pollution, or soil reclamation, or with any other resources of the state, and concerned with the administration of the public works program of the state or any part thereof. The commission is authorized to act and to contract fully with the United States, or with any department, agency, or officer thereof, with full power of purchase, sale, or lease to carry out, develop, or administer any federal project within this state or partly within the state, and also to accept and to use any funds provided by the United States or any agency thereof for any such purposes.

61-02-24.1. Cooperation and participation of political subdivisions. All political subdivisions, including counties, townships, cities, park districts, and water resource districts may separately or jointly with other political subdivisions, the state of North Dakota through the commission or federal departments or agencies, investigate, plan, and do all things necessary for participating in or undertaking underground or surface water surveys, development, construction, reconstruction, and maintenance of works, dams, and projects for the beneficial utilization and control of water resources, and may enter into contracts with the commission to pay rents, charges, or other payments for the use of works of the commission.

61-02-24.2. Payments in lieu of real estate taxes. For land acquired for the Devils Lake project, the state water commission shall make payments in lieu of real estate taxes to the counties in which the property is located in the same manner and according to the same conditions and procedures as provided in chapter 57-02.1 for payments in lieu of real estate taxes by the state game and fish department.

61-02-25. Duties of state agencies acting through interstate compacts or agreements. Every state officer, department, board, and commission authorized by any law of this state to act upon or to be concerned with any interstate commission involving any interstate compact, or to act upon any foreign commission involving any foreign compact, or with any federal agency or department of the United States, the subject matter of which in any way concerns or involves water conservation, flood control, irrigation, water pollution or contamination, or the exercise of the powers and duties granted to the commission by this chapter, first shall submit to the commission the plans, purposes, and contemplated action and shall receive the approval of the commission therefor before making any agreement, contract, purchase, sale, or lease, for any of said purposes. The commission may give its aid and assistance to any state agency so acting with respect to any interstate compact.

61-02-26. Duties of state agencies concerned with intrastate use or disposition of waters. Every state officer, department, board, and commission heretofore or hereafter authorized by any law of this state to take any action, perform any duties, or make any contract which concerns the use or disposition of waters, or water rights, within the state first shall submit to the state engineer any plans, purposes, and contemplated action with respect to the use or

disposition of such waters, and except as provided in this chapter, shall receive the consent and approval of the state engineer before making any agreement, contract, purchase, sale, or lease to carry into execution any works or projects authorized under the provisions of this chapter.

61-02-27. Proposals with respect to use or disposition of waters to be presented to state engineer. All persons, including corporations, limited liability companies, voluntary organizations, and associations, when concerned with any agreement, contract, sale, or purchase, or the construction of any works or project which involves the use and disposition of any water or water rights, shall present to the state engineer all proposals with respect to the use or disposition of any such waters before making any agreement, contract, purchase, sale, or lease in respect thereof.

61-02-28. Plans, investigations, and surveys concerning use of waters - Special powers of commission. The commission may make plans, investigations, and surveys concerning the use of any and all waters, either within or without this state, for purposes of establishing, maintaining, operating, controlling, and regulating systems of irrigation, municipal, domestic, industrial, recreational, and fish and wildlife works and projects in connection therewith within the state. The commission shall have all necessary powers of purchasing, selling, leasing, and assigning in accordance with chapter 61-04, rights and interests in the use or in the appropriation of waters for which it has filed a declaration of intent pursuant to section 61-02-30, or obtained a conditional water permit for projects or works and shall possess full authority and jurisdiction to exercise and assert actual control over the corpus of all of such waters, and to regulate the diversion thereof subject to rules and methods prescribed by the commission. This power and authority shall include full right to contract and agree with any person, association, agency, or entity concerning water rights held by such person, association, agency, or entity through which the commission may be given full authority and jurisdiction over such water and water rights. In connection therewith the commission may coordinate, subordinate, supplement, and act jointly or subordinately with the United States, and any agency or department thereof, covering or concerning any federal project affecting water use, works, or projects in connection therewith.

61-02-29. Commission to have full control over unappropriated public waters of state. The commission shall have full control over all unappropriated public waters of the state, whether above or under the ground, for which it has filed a declaration of intention pursuant to section 61-02-30, to the extent necessary to fulfill the purposes of this chapter.

61-02-30. Commission acquiring water rights and administering provisions of chapter - Declaration of intention. In acquiring the rights and administering the terms of this chapter, the commission may initiate a right to waters of this state by executing a declaration in writing of the intention to store, divert, or control the unappropriated waters of a particular body, stream, basin, or source, designating and describing in general terms the waters claimed, means of appropriation, and location of proposed use, and shall cause said notice to be filed in the office of the state engineer. The state engineer shall issue a conditional water permit to the commission consistent with the terms of the declaration of intention, which shall vest in such commission on the date of the filing of such declaration. The commission also shall file in the office of the state engineer copies of its plans and specifications involved in completing any project for the appropriation of water which it intends to construct. Except as provided by this section, water rights shall be acquired by any person, association, firm, corporation, limited liability company, municipality, or state or federal agency, department, or political subdivision in the manner provided by chapter 61-04.

61-02-31. Priority of a water right dates from when. Repealed by S.L. 1983, ch. 676, § 38.

61-02-32. Modification of plans by commission regarding project to appropriate waters - Filing declaration of intention. The commission, if it shall modify its plans in connection with any proposed project concerning which the commission shall have filed a declaration of intention to appropriate waters, shall file in the office of the state engineer a declaration releasing all or part of the waters affected by such declaration.

61-02-33. Commission to file declaration of completion of appropriation with state engineer. Upon completing the construction of works and application to beneficial use of the waters described in the declaration provided in section 61-02-30, the commission shall file in the office of the state engineer a declaration of completion of the appropriation, reciting the matters contained in the original declaration of intention to appropriate and the conditional water permit for such works obtained from the state engineer.

61-02-34. Declaration of intention to appropriate or release waters or completion of appropriation as evidence. A certified copy of the record of the commission's declaration of intention to appropriate waters, or of the release of all or part of said waters, or of the completion of appropriation, shall be received as competent evidence in all courts and shall be deemed prima facie proof of all matters recited therein.

61-02-35. When right of commission to waters attaches - Continuation of authority and jurisdiction. The right of the commission to the waters within this state acquired as provided in this chapter for the purposes defined in this chapter shall attach at and from their source and while flowing in the streams, traveling to the means of control, as well as when actually confined by such means. The authority and jurisdiction of the commission shall continue over such waters after they are released for purposes of use and shall continue to such places of use, and the commission, through and by officers and agents under its authority, may continue to exercise control over such waters and may prevent the diversion thereof without permission first obtained. The commission may reclaim and possess all waters furnished or supplied by it seeping or overflowing from the previous place of use.

61-02-36. Natural streams employed as a means of diversion of water - Adopting methods to determine natural flow. Wherever natural streams are employed as a means of diversion of water from the place of confinement to the place of use, the commission shall adopt proper methods and means of determining the natural flow of such streams when the amount of such natural flow is insufficient to satisfy or fill the needs of appropriators prior in right.

61-02-37. Headgates and measuring devices maintained by appropriators of natural streams - Commission adopting rules preventing diversion of water. All appropriators of the natural flow of natural streams shall maintain headgates and measuring devices at their respective points of diversion for the purpose of enabling the commission or its authorized agents to determine the amount of water being diverted at any time. The commission may adopt and exercise any method or act to prevent the diversion of any waters under its control without permission first obtained.

61-02-38. Holder of water right on natural stream may turn control over to commission. Any holder of a water right on a natural stream may agree with the commission that it shall have control of the diversion of waters due under such right. In such an event, the commission, through its officers and agents, may exercise the same authority over the waters due said appropriator and may cause them to be delivered to the appropriator in the same manner as in case of waters appropriated by the commission.

61-02-39. Commission may adjust plans and operation of project to obtain financial aid from United States. For the purpose of obtaining financial aid from the United States, the commission may adjust the plans and operation of any project created under this chapter to conform to the laws and regulations of the federal government and the supervision of any board, bureau, or commission constituted under such authority and may exercise such powers whenever conferred.

61-02-40. Authority of commission to extend and be applied to natural waters of state. The authority of the commission conferred by the provisions of this chapter shall extend and be applied to any right to the natural flow of the waters of this state which it may acquire by condemnation, purchase, exchange, appropriation, or agreement.

61-02-41. Surveys for the diversion of waters. For the purpose of regulating the diversion of the natural flow of waters, the state engineer may enter upon the means and place of

use of all appropriators for the purpose of making surveys of respective rights and seasonal needs.

61-02-42. Commission to take into consideration decrees of court adjudicating waters of natural stream. The commission shall take into consideration the decrees of the courts of this state having jurisdiction which purport to adjudicate the waters of any natural stream or its tributaries, and a fair, reasonable, and equitable reconciliation shall be made between the claimants asserting rights under different decrees and between decreed rights and asserted rights of appropriation not adjudicated by any court.

61-02-43. Commission may hold hearings relating to rights of claimants - Notice - Findings made. The commission may hold hearings relating to the rights of respective claimants after first giving such notice as it deems appropriate, and it may make findings of the date and quantity of appropriation and use of all claimants, which it shall recognize and observe in diverting the waters which it owns. The commission may police and distribute to the owner of any such recognized appropriation the waters due the owner upon request of such owner and under terms agreed upon.

61-02-44. Controlling natural flow of stream deemed police power - Water commissioners not to deprive commission. The commission, when engaged in controlling and diverting the natural flow of any stream under the authority granted by the provisions of this chapter, shall be deemed to be exercising a police power of this state. Water commissioners appointed by any court shall not have any authority or jurisdiction to deprive the commission of any of the waters owned or administered under agreement with respective owners, but the owner of any prior or vested right contending that the commission is not recognizing and respecting such right may resort to a court of law or equity for the purpose of determining whether or not the rights of said claimant have been invaded, and the commission shall observe the terms of any final decree.

61-02-45. Commission may divert at any place on stream after impounding or acquiring the right of appropriation. On the commission's impounding or acquiring the right of appropriation of the waters of any stream, it may divert or authorize the diversion at any point on said stream, or any portion thereof, when the same may be done without injury to any prior appropriator or riparian owner whose rights shall not have been acquired by the commission as provided in this chapter.

61-02-46. Commission may issue bonds - Legislative authorization - Payment restricted.

1. The commission may provide by resolution, at one time or from time to time, for the issuance of state water development revenue bonds for the purpose of paying the cost of any one or more of the works authorized by this chapter. The commission may provide for the refunding and refinancing of the bonds from time to time as often as it is advantageous and in the public interest to do so.
2. If the principal amount of bonds to be issued for any one works pursuant to this chapter will exceed in the aggregate two million dollars, no bonds may be issued to finance that works unless the legislative assembly authorizes the works and declares the works to be in the public interest.
3. Bonds issued under this chapter shall not be in any way a debt or liability of this state and shall not constitute a loan of the credit of this state or create any debt or debts, liability or liabilities on behalf of this state, or be or constitute a pledge of the faith and credit of this state, but all such bonds shall be payable solely from funds or revenues pledged or available for their payment as authorized in this chapter. The bonds shall not constitute a charge, lien, nor encumbrance, legal or equitable, upon any property of the commission, other than funds or revenues pledged for their payment. Each bond shall recite in substance that the bond, including interest thereon, is payable solely from the funds or revenues pledged to the payment

thereof, and that the bond does not constitute a debt of this state or of the commission within the meaning of any constitutional or statutory limit.

61-02-47. When bonds to mature - Callable before maturity. The bonds which may be issued by the commission shall mature at such time or times, either serially or at one time, in not more than forty years from their date, or dates, as may be fixed by the resolution of the commission, but may be made callable before maturity, if so stated in the resolution and on the face of each bond.

61-02-48. Commission to determine interest rate, form, denomination, and execution of bonds. The commission shall determine the rate of interest bonds issued under this chapter shall bear, the time or times of payment of such interest, the form of the bonds, and the manner of executing the bonds, and shall fix the denomination or denominations of the bonds and the place or places of payment of principal and interest thereon, which may be at any bank or trust company within or without this state. The bonds shall be sold at public sale or private sale and at such price or prices as the commission shall determine.

61-02-49. Officers whose names are on bonds ceasing to be officers before delivery of bonds - Validity of bonds. In case any of the officers whose signatures appear on the bonds or coupons provided for in this chapter shall cease to be such officers before the delivery of such bonds, such signatures nevertheless shall be valid and sufficient for all purposes, the same as if such officers had remained in office until such delivery.

61-02-50. Bonds issued are negotiable. Repealed by S.L. 1983, ch. 676, § 38.

61-02-51. How bonds may be secured. The bonds provided for in this chapter may be secured by works or lands, and the income derived therefrom, and other funds as the commission may pledge, and the funds received from the sale or disposal of water and from the operation, lease, sale, or other disposition of the works, lands, property, and facilities to be acquired out of the proceeds of the bonds and as provided in this chapter.

61-02-52. Commission may provide for registration of bonds. Provision may be made by the commission for the registration of any of the bonds as provided by chapter 21-03.1.

61-02-53. Issuance and sale of bonds - Proceeds from sale - Use. The bonds authorized under this chapter may be issued and sold from time to time and in amounts determined by the commission. The commission may, subject to the provisions of section 61-02-48, provide for the sale of the bonds in such manner and for such price as it may determine to be for the best interests of the state. The proceeds of the bonds shall be used solely for the payment of the cost of works authorized by this chapter plus costs of issuance, interest during construction, and any reasonably required reserve funds, and shall be paid out in such manner and under such restrictions as the commission may provide.

61-02-54. Resolution providing for issuance of bonds. Each resolution providing for the issuance of bonds provided for in this chapter shall set forth the purpose or purposes for which the bonds are to be issued, the provisions for the payment of the bonds, and the revenues or other funds pledged to secure the payment of the bonds.

61-02-55. Issuance of temporary bonds. Prior to the preparation of definitive bonds, the commission may issue or provide for the issuance of temporary bonds, exchangeable for definitive bonds when the definitive bonds have been executed and are available for delivery. Temporary bonds may be issued without any other proceedings or the happening of any other condition or thing specified and required by this chapter, except that if legislative authorization is required for the issuance of the definitive bonds pursuant to section 61-02-46, the authorization must be received before the temporary bonds may be issued.

61-02-56. Bond guaranty or insurance - Method. Whenever the commission shall find it necessary to insure or guarantee the payment of all or a part of the principal or interest of any series of bonds, it may enter into an agreement to place under trust indenture or agree to deposit

in a trust fund moneys now or hereafter appropriated, to guarantee and insure the payment of the interest on and principal of the bonds. From and with moneys thus appropriated, the commission may guarantee or insure, or agree to pay, or pay the interest on and principal of the bonds. The appropriation of such funds, and the use thereof by the commission to guarantee or insure the payment of any of its bonds, shall not be construed to be pledging the credit of the state of North Dakota nor the guaranteeing by the state of any bonds. The commission may also enter into an agreement with a private bond insurer or with a bank or other credit enhancement provider for bond insurance, a guaranty, a letter of credit, or any other credit enhancement that the commission may find to be advantageous or necessary to insure or guarantee the payment of the interest on or the principal of the bonds. The cost of any credit enhancement may be paid with bond proceeds or other funds available for that purpose.

61-02-57. Moneys appropriated to pay interest and principal of bonds available as a revolving fund. Moneys appropriated to enable the commission to guarantee the payment of the interest or principal of its bonds shall be available to the commission as a continuing revolving fund, and moneys so appropriated, and any unexpended balances thereof, including interest on the moneys and unexpended balances, shall not revert to the state general fund at the end of any biennial fiscal period but shall be available for use by the commission to insure and guarantee the payment of, or pay, to the extent provided in this chapter, the interest and principal of its bonds until otherwise required by law.

61-02-58. Lien upon bond proceeds. All moneys received from bonds of any series issued pursuant to this chapter shall be used solely for the purpose of paying the cost of the works or projects for the construction of which the bonds have been issued, or for the purpose of paying costs of issuance, interest during construction, and establishing any reasonably required reserve funds. There shall be a lien upon such moneys, until so used in favor of the holders of the bonds or the trustee provided for in this chapter in respect to the bonds.

61-02-59. Series of bonds may be secured by trust indenture. In the discretion of the commission, any series of bonds may be secured by a trust indenture by and between the commission and a corporate trustee, which may be any trust company or bank having the powers of a trust company within or outside of the state.

61-02-60. Trust indentures - Where filed - Filing constitutes constructive notice. Each trust indenture, or an executed counterpart thereof, shall be filed in the office of the secretary of state. The filing of a trust indenture, or an executed counterpart thereof, in the office of the recorder of the county in which the property covered by said trust indenture is located shall constitute constructive notice of the contents thereof to all persons from the time of such filing, and no recording of such trust indenture or the contents thereof shall be necessary.

61-02-61. Resolution or indenture may contain provisions protecting bondholders - Expenses incurred in carrying out indenture. Either the resolution providing for the issuance of bonds or the trust indenture may contain such provisions for protecting and enforcing the rights and remedies of the bondholders as may be reasonable and proper. No enumeration of particular powers granted may be construed to impair any general grant of power contained in this chapter. All expenses incurred in carrying out the provisions of the resolution or trust indenture may be treated as a part of the cost of maintenance, operation, and repair of the works affected by the resolution or trust indenture.

61-02-62. Powers of commission in issuance of bonds. In connection with the issuance of any bonds for the purpose of paying in whole or in part, or as supplemented by a grant from the United States or any instrumentality or agency thereof, the cost of any works or project, or in order to secure the payment of the bonds, the commission may:

1. Pledge all or any part of the income, profit, and revenue of the works or project, and all moneys received from the sale or disposal of water, use of water, water storage, or other service, and from the operation, lease, sale, or other disposition of all or any part of the works or project, or other funds as the commission may determine.

2. Covenant against pledging all or any part of the income, profit, and revenue of the works or project and all moneys received from the sale or disposal of water, use of water, water storage, or other service, and from the operation, lease, sale, or other disposition of all or any part of the works or project.
3. Covenant against mortgaging all or any part of the works or project or against permitting or suffering any lien thereon.
4. Covenant to fix and establish such prices, rates, and charges for water and other services made available in connection with the works or project as to provide at all times funds together with other funds the commission may pledge which will be sufficient:
 - a. To pay all costs of operation and maintenance of the works or project together with necessary repairs thereto;
 - b. To meet and pay the principal and interest of all the bonds as they severally become due and payable; and
 - c. To create such reserves for the principal and interest of all the bonds and for the meeting of contingencies in the operation, repair, replacement, and maintenance of the works or project as the commission shall determine.
5. Make such further covenants as to prices, rates, and charges as the commission shall determine.
6. Create special funds, in addition to those required by this chapter, for the meeting of contingencies in the operation and maintenance of the works or project and to determine the manner in which, and the depository or depositories in which, the funds shall be deposited and the manner in which the same shall be secured. Any bank or trust company incorporated under the laws of this state may act as the depository and shall furnish such indemnifying bonds or pledge such securities as may be required by the commission on all deposits exceeding the sum of five thousand dollars.
7. Provide for the replacement of lost, destroyed, or mutilated bonds.
8. Covenant against extending the time for the payment of the principal or interest on any bonds, directly or indirectly, by any means or in any manner.
9. Prescribe and covenant as to the events of default and the terms and conditions upon which any or all of the bonds shall become, or may be declared, due before maturity, and as to the terms and conditions upon which a declaration and its consequences may be waived.
10. Covenant as to the rights, liabilities, powers, and duties arising upon the breach by it of any covenant, condition, or obligation.
11. Vest in a trustee or trustees the right to enforce any covenant made to secure or to pay the bonds, or to foreclose any trust indenture in relation thereto, provide for the powers and duties of the trustee, or trustees, and limit the liabilities thereof, and provide the terms and conditions upon which the trustee or trustees or the holders of bonds or any proportion of them may enforce any covenant or exercise the right of foreclosure.
12. Make covenants and do any and all such acts and things as may be necessary or convenient or desirable in order to secure the bonds, or, in the absolute discretion of the commission, to make the bonds more marketable, notwithstanding that such

covenants, acts, or things may not be enumerated or expressly authorized in this chapter.

13. Do all things in the issuance of the bonds, and in providing for their security, that may not be inconsistent with the Constitution of North Dakota.

61-02-63. Mortgage of commission - Contents - Purchaser at foreclosure sale - Rights. Any purchaser at any sale of any works or project pursuant to a judgment or decree in an action to foreclose a trust indenture conveying in trust or mortgaging any works or project financed with bonds issued by the commission as authorized by this chapter shall obtain title to the works or project free from any trust or other obligation of the commission, the state of North Dakota, or the public thereof, as to its operation, maintenance, use, or disposition except the obligation to use all water impounded in the works or project for sale, rental distribution, or other beneficial use.

61-02-64. Fund created by commission - Depository. The commission shall have a fund to be known as the "contract fund". The moneys in the contract fund shall be deposited in the state treasury. The contract fund shall have such accounts as the commission may determine. The use or disposition of such accounts, including the pledging thereof for the security of and payment on one or more series of bonds, shall be determined by the commission.

61-02-64.1. Contract fund - Purpose - Reimbursements to be deposited with the state treasurer. Unless otherwise provided under the terms of a bond resolution or trust indenture adopted by the commission pursuant to this chapter, all contractual obligations of the commission, excepting salaries and expenses of commission employees and the cost of any office supplies, materials, and equipment, must be paid from the contract fund. The moneys in the contract fund must be paid out or disbursed in the manner determined by the commission. Any moneys paid to the commission by any department, agency, or political subdivision of this or another state or of the United States or any person, corporation, or limited liability company to meet its part of the cost of a water project, shared with the commission on a matching basis, and as determined by a contract entered into with the commission, must be held pursuant to the terms of the resolution or trust indenture adopted by the commission pursuant to this chapter or deposited with the state treasurer. Moneys deposited with the state treasurer are appropriated to the commission and must be credited to the contract fund.

61-02-64.2. Repayment of loan proceeds and reimbursements deposited in resources trust fund. Notwithstanding section 61-02-64.1, any repayment made after January 1, 1991, of any loans disbursed from the contract fund or resources trust fund and any moneys paid to the state or the commission after January 1, 1991, to reimburse the commission for moneys, other than bond proceeds, used for municipal, rural, and industrial water supply projects must be deposited in the resources trust fund in the state treasury.

61-02-65. Commission to have complete system of accounting - Contents. The commission shall have a complete system of accounting to show the total expenditure of and investment in each project and the total revenue derived therefrom and shall prepare periodic reports giving the financial statement of each project and the status of all projects together.

61-02-66. Construction fund - Contents - Disbursements - Surplus remaining. Repealed by S.L. 1995, ch. 588, § 18.

61-02-67. Revenue bond payment fund - Contents. Repealed by S.L. 1995, ch. 588, § 18.

61-02-67.1. Revenues and funds available to pay bonds. Bonds issued under this chapter are payable solely from:

1. Revenues to be received by the commission from the operation of a works financed with the bonds.

2. Any other revenues available to the commission.

61-02-68. State treasurer to pay interest on bonds - Redemption of bonds - Appropriation. Repealed by S.L. 1995, ch. 588, § 18.

61-02-68.1. Borrowing on interim notes - Expenses paid and loans made from proceeds - Issuance of notes. The commission, pursuant to appropriate resolution, and in order to carry out the business of developing the water resources of this state as provided in this chapter, may borrow money and issue interim financing notes (the terms "interim notes" or "notes", unless the context otherwise requires, may be used in sections 61-02-68.1 through 61-02-68.19 in lieu of the term "interim financing notes") in evidence thereof in order to provide owners with construction period financing. The construction period financing may include the costs of construction of works or projects, funding of debt service reserves and capitalized interest, and the payment of the costs of issuance.

61-02-68.2. Interim financing notes guaranteed by United States agency or instrumentality - Limitations. In addition to its other powers, the commission may enter into interim financing and loan agreements with any owner or owners to loan the proceeds of the commission's interim financing notes to any owner or owners for works or projects authorized by this chapter anywhere within this state and to adopt the necessary resolution therefor, without regard to the limitations, provisions, or requirements of any other law, except those of this chapter. Before any such agreement can be entered into, an agency or instrumentality of the United States government, including, but not limited to, the farmers home administration or the old west regional commission, or any agency of this state, including but not limited to, the Bank of North Dakota, must have committed itself to make a grant or loan to such owner or owners. Under this section the commission may only provide interim financing less than or equal to the federal or state grant or loan commitment on each project and may not apply the proceeds of such notes and financing to any purpose other than expenses allowed by section 61-02-68.1 and the project or works for which the loan agreement is made. Notes authorized by sections 61-02-68.1 through 61-02-68.13 shall not be considered revenue bonds under section 61-02-46, and the proceeds of any such notes shall not be part of any commission fund as enumerated in section 61-02-64, and need not be deposited in the state treasury.

61-02-68.3. Interim financing - Proper authority required. Before entering into any loan agreement under section 61-02-68.2, the commission shall be satisfied by opinion of the attorney general, by an examination of relevant charters, resolutions, minutes, and other documents, or by other sufficient means that the owner or owners receiving such interim financing has the authority and power to construct the project or works, borrow these funds, and enter into the loan agreement. The commission shall also be so satisfied that all procedures, resolutions, and other things necessary to exercise such authority and power have been followed or properly performed.

61-02-68.4. Interim financing - Independent review of feasibility of project. Before issuing any interim financing notes pursuant to section 61-02-68.1, the commission shall conduct a review of the feasibility of the project or works to ensure that projected water consumption, operating costs, construction costs, revenues, and other statistics are reliable and that the project will be able to pay its expenses. The commission shall state the findings of its review in a motion entered in the minutes of its proceedings.

61-02-68.5. Interim financing - Proceeds pledged as security - Assignment to commission of rights to proceeds. Any interim financing agreement pursuant to section 61-02-68.2 shall provide that the owner or owners receiving the proceeds of such interim financing shall pledge and dedicate the proceeds of its loan or grant from the United States or the state as security for the interim financing notes issued pursuant to the loan agreement. In addition, the execution of any interim financing agreement under section 61-02-68.2 shall constitute an assignment to the commission of the right to receive the proceeds of the federal or state loan or grant so far as is necessary to secure the notes issued pursuant to the agreement and in preference to any other obligation whatsoever of the owner or owners receiving the interim financing. It shall not be necessary for the financing agreement, trust indentures, or any other

document relating to the interim financing agreement to be filed or recorded in order for the assignment to the commission to be perfected.

61-02-68.6. Terms of interim financing notes - Extension of maturity dates. Any resolution authorizing the issuance of interim financing notes shall specify the principal amount, rate of interest, and maturity date, but not to exceed three years from date of issue, and such other terms as may be specified in such resolutions. The time of payment of any such notes may be extended for a period of not exceeding two years from the maturity date thereof.

61-02-68.7. Pledge of revenues to secure interim financing notes. All interim financing notes and the interest thereon must be secured by a pledge of, and be payable from, any grant or loan to be made by an agency or instrumentality of the United States government or the state of North Dakota, as specified in section 61-02-68.2, and in connection with such project or works.

61-02-68.8. Additional covenants and conditions to secure interim financing notes. The commission, in order to further secure the payment of the interim financing notes, is authorized and empowered to make any other or additional covenants, terms, and conditions, and to do and perform such acts as may be necessary, convenient, or desirable in order to secure payment of its notes, and to make the notes more acceptable to lenders. Exercise of authority pursuant to this section shall be consistent with the provisions of this chapter.

61-02-68.9. Registration of interim financing notes - Interest payment - Redemption prior to maturity. The commission may provide for the registration of interim financing notes in the name of the owner either as to principal alone, or as to both principal and interest, on such terms and conditions as the commission may determine by the resolution authorizing their issue. Interest on the notes may be made payable semiannually, annually, or at maturity, however, the first interest payment period may be less than six months. The notes may be made redeemable, prior to maturity, at the option of the commission, in the manner and upon the terms fixed by the resolution authorizing their issuance.

61-02-68.10. Execution and attestation of interim financing notes - Sale. The interim financing notes shall be executed by the chairman or the vice chairman of the commission and shall be attested by the signature of the state engineer. The signature of the chairman or vice chairman, and the state engineer, and any other signatures on appurtenant coupons, may be facsimiles. The notes shall be sold at private or public sale in such manner, at such rate of interest, and at such price as the commission shall by resolution determine.

61-02-68.11. Bond provisions applicable to interim financing notes. The provisions of sections 61-02-49, 61-02-59, 61-02-60, 61-02-61, 61-02-62, and 61-02-65, relating to bonds also apply to notes issued pursuant to section 61-02-68.1.

61-02-68.12. Interim financing notes or guarantees not a state obligation - Payment restricted to revenues - Notes or guarantees not a lien. Interim financing notes issued by the commission under this chapter or guarantees provided under sections 61-02-68.14, 61-02-68.15, 61-02-68.16, 61-02-68.17, 61-02-68.18, or 61-02-68.19 are not a debt or liability of this state and do not constitute a loan of the credit of this state or create any debt or debts, liability or liabilities on behalf of this state, or be or constitute a pledge of the faith and credit of this state, but all notes or guarantees are payable solely from funds pledged or available for their payment as authorized in this chapter. The notes or guarantees do not constitute a charge, lien, nor encumbrance, legal or equitable, upon any property of the commission, other than funds received pursuant to an interim financing agreement.

Each note issued under this chapter must recite in substance that the note, including interest thereon, is payable solely from a loan or grant to be made by an agency or instrumentality of the United States government, or North Dakota, and that the note does not constitute a debt of the commission within the meaning of any constitutional or statutory limit.

61-02-68.13. Interim financing notes as legal investments and security. Notwithstanding any restrictions contained in any other law, this state and all public officers, boards and agencies, and political subdivisions and agencies thereof, all national banking associations, state banks, trust companies, savings banks and institutions, savings and loan associations, investment companies, and other persons carrying on a banking business, and all executors, administrators, guardians, trustees, and other fiduciaries, may legally invest any sinking funds, moneys, or other funds belonging to them or within their control in any interim financing notes issued by the commission pursuant to this chapter, and the notes are authorized security for any and all public deposits.

61-02-68.14. Guarantee issued by commission. The commission may guarantee evidences of indebtedness issued or other obligations undertaken by the owners of water projects eligible to receive municipal, rural, and industrial water supply funds pursuant to Pub. L. 99-294 [100 Stat. 418], or evidences of indebtedness issued or other obligations undertaken by a not-for-profit organization establishing a financing program for the owners of the water projects eligible to receive municipal, rural, and industrial water supply funds pursuant to Pub. L. 99-294 [100 Stat. 418] for the purpose of providing the owners with construction period financing. Construction period financing may include the cost of construction of works or projects, funding of debt service reserves and capitalized interest, and the payment of the costs of issuance. A commission guarantee of indebtedness or other obligations of an owner of a water project must be authorized by resolution of the commission and must be evidenced by a written agreement approved by the commission.

61-02-68.15. Pledges. The commission may pledge the municipal, rural, and industrial water supply funds authorized by Pub. L. 99-294 [100 Stat. 418] as security for a guarantee or note. A pledge is valid and binding whenever the pledge is made. The revenues or other moneys pledged and thereafter received by the commission are immediately subject to the lien of the pledge without physical delivery or further act, and the lien of the pledge is valid and binding as against all parties having claims of any kind against the commission, regardless of whether the parties have notice. Neither the resolution nor any other instrument by which a pledge is created need be filed or recorded, except in the records of the commission.

61-02-68.16. Reserve fund.

1. The commission shall establish and maintain a reserve fund in which there must be deposited all moneys appropriated by the legislative assembly for the purpose of the fund, all proceeds of notes issued or guaranteed by the commission required to be deposited in the fund by terms of a contract or a resolution of the commission with respect to the proceeds of notes, any moneys or funds of the commission that it determines to deposit in the fund, any moneys made available to the commission for the purposes of the fund from any other source, and any contractual right to the receipt of moneys by the commission for the purpose of the fund, including a letter of credit or similar instrument. Moneys in the reserve fund must be held and applied solely to the payment of the interest on and the principal of notes and sinking fund payments as they become due and payable and for the retirement of notes, including payment of any redemption premium required to be paid when any notes are redeemed or retired before maturity, and for the payment of principal and interest on evidences of indebtedness or obligations guaranteed by the commission. Moneys in the reserve fund may not be withdrawn if the withdrawal would reduce the amount in the reserve fund to an amount less than the required debt service reserve, except for payment of the interest due and payable on notes and the principal of notes maturing and payable and sinking fund payments and for the retirement of notes in accordance with the terms of a contract between the commission and its noteholders, for the payment of principal and interest on evidences of indebtedness or obligations of an owner of water projects for which a guarantee has been issued by the commission, and for payment of interest or principal or sinking fund payments or retirement of notes or draws upon a guarantee, for which other moneys of the commission are not then available in accordance with the terms of the contract. The reserve fund may not be used for the payment of a guarantee by the commission

unless the commission has determined that notes of the commission cannot be issued under acceptable terms for the payment of the guarantee or that the payment of the guarantee will not reduce the reserve fund to an amount less than the required debt service reserve. The required debt service reserve must be an aggregate amount equal to at least the largest amount of money required by the terms of all contracts between the commission and its noteholders to be raised in the current or any succeeding calendar year for the payment of interest on and maturing principal of outstanding notes and the payment required by the terms of any contract to a sinking fund established for the payment or redemption of the notes.

2. If the establishment of the reserve fund for an issue or the maintenance of an existing reserve fund at a required level under this section would necessitate the investment of all or any portion of a new reserve fund or all or any portion of an existing reserve fund at a restricted yield, because to not restrict the yield may cause the notes to be taxable under the Internal Revenue Code, then at the discretion of the commission a reserve fund does not need be established before the issuance of notes or the reserve fund need not be funded to the levels required by other subsections of this section or an existing reserve fund may be reduced.
3. Notes may not be issued by the commission unless there is in the reserve fund the required debt service reserve for all notes then issued and outstanding and the notes to be issued. This chapter does not prevent or preclude the commission from satisfying this requirement by depositing so much of the proceeds of the notes to be issued, upon their issuance, as is needed to achieve the required debt service reserve. The commission may issue its notes for the purpose of providing an amount necessary to increase the amount in the reserve fund to the required debt service reserve, or to meet any higher or additional reserve as may be fixed by the commission with respect to the fund.
4. In order to assure the maintenance of the required debt service reserve, there must be appropriated by the legislative assembly and paid to the commission for deposit in the reserve fund any sum certified by the commission as necessary to restore the reserve fund to an amount equal to the required debt service reserve or to maintain a reserve fund established by the commission under this chapter and required according to the terms of a guarantee issued by the commission. The commission may approve a resolution for the issuance of notes, as provided by this chapter, which states in substance that this subsection is not applicable to the required debt service reserve for notes issued under that resolution.
5. If the maturity of a series of notes of the commission is not more than three years from the date of issuance of the notes, the commission may determine that no reserve fund need be established for that respective series of notes or that the reserve fund may be in an amount less than the required debt service reserve. If the determination is made, holders of that respective series of notes do not have an interest in or claim on existing reserve funds established for the security of the holders of previously issued commission notes, and do not have an interest in or claim on reserve funds established for the holders of subsequent issues of notes of the commission.

61-02-68.17. Additional reserves and funds. The commission may establish additional and further reserves or other funds or accounts as may be necessary, desirable, or convenient to further the accomplishment of the purposes of the commission to comply with the provisions of an agreement made by or a resolution of the commission.

61-02-68.18. Protection of service during term of guarantee or loan.

1. The service provided or made available by owners of water projects through the construction or acquisition of an improvement, or the improvement revenues, financed in whole or in part with a guarantee or loan to the owners of water projects

from the commission or any other state entity, may not be curtailed or limited by inclusion of all or any part of the area served by the owners of water projects within the boundaries of any other owners of water projects, or by the granting of any private franchise for similar service within the area served by the owners of water projects, during the term of the guarantee or loan. The owners of water projects providing the service may not be required to obtain or secure a franchise, license, or permit as a condition of continuing to serve the area if it is included within the boundaries of another owner of a water project during the term of the guarantee or loan.

2. Under the circumstances described in subsection 1, nothing prevents the two owners of water projects and the commission or other state entity from negotiating an agreement for the right or obligation to provide the service in question, provided that an agreement is invalid unless the commission or other state agency or enterprise is a party to the agreement and unless the agreement contains adequate safeguards to ensure the security and timely payment of any outstanding notes of the commission issued to fund the loan.

61-02-68.19. Interim financing notes, guarantees, or bonds for municipal, rural, and industrial water supply projects - Public interest. Guarantees made under section 61-02-68.14 or bonds or interim notes issued under chapter 61-02 for the purpose of providing construction period financing for owners of water projects eligible to receive municipal, rural, and industrial water supply funds pursuant to Pub. L. 99-294 [100 Stat. 418] are in the public interest and are not subject to the limitation contained in subsection 2 of section 61-02-46.

61-02-69. Property of commission exempt from taxation. All the property of the commission shall be exempt from taxation.

61-02-70. Expenses paid from administrative fund. Repealed by S.L. 1965, ch. 447, § 24.

61-02-71. Commission may accept and receive appropriations and contributions. The commission may receive and accept appropriations and contributions from any source, either of money or property or things of value, to be held, used, and applied for the purposes provided for in this chapter.

61-02-72. Revenue bonds of commission are legal and valid investments of financial institutions - Exemption from taxation. Notwithstanding any restrictions contained in any other law, the state and all public officers, boards, and agencies, and political subdivisions and agencies thereof, all national banking associations, state banks, trust companies, savings banks and institutions, savings and loan associations, investment companies, and other persons carrying on a banking business, and all executors, administrators, guardians, trustees, and other fiduciaries, may legally invest any sinking funds, moneys, or other funds belonging to them or within their control in any bonds issued by the commission pursuant to this chapter, and the bonds are authorized security for public deposits. The bonds, and the interest thereon, are exempt from all state, county, and municipal taxes.

61-02-73. Construction of chapter. Nothing contained in this chapter shall be deemed to interfere with any vested rights to the use of water. This chapter being necessary for the welfare of the state and its citizens, it shall be construed liberally to effect the purposes thereof.

61-02-74. Certain moneys to be deposited in general fund. Repealed by S.L. 1971, ch. 587, § 1.

61-02-75. Hearing witnesses - Subpoena - Oath - Fees. Repealed by S.L. 1987, ch. 739, § 1.

61-02-76. Hearing - Appeals from decision of commission. Except as more specifically provided in this title, any person aggrieved because of any action or decision of the

commission under the provisions of this title has the right to a hearing by the commission if no hearing on the matter resulting in the action or decision has been held. If a hearing has been held, the person aggrieved has the right to petition for reconsideration and to appeal, all in accordance with the provisions of chapter 28-32.

61-02-77. Emergency municipal, tribal, and rural water system drinking water grant program. The commission may establish an emergency municipal, tribal, and rural water assistance program for municipalities, tribes, and rural water systems, whose primary source of water is the Missouri River, Lake Sakakawea, or Lake Oahe. The commission may establish procedures, cost-share guidelines, and other criteria for municipalities, tribes, and rural water systems that request emergency assistance due to low water conditions on the Missouri River, Lake Sakakawea, or Lake Oahe. The purpose of this program is to provide emergency grant funds to municipalities, tribes, and rural water systems facing a critical need or health risk as a result of the inability of the water intake system for the municipal, tribal, or rural water system to supply an adequate quantity of quality water to the people served by the municipal, tribal, or rural water system.

**CHAPTER 61-02.1
FLOOD CONTROL OR REDUCTION PROJECTS**

<u>Section</u>		<u>Page</u>
61-02.1-01	Legislative findings and intent - Authority to issue bonds	61-02.1: 1
61-02.1-02	[Repealed]	61-02.1: 3
61-02.1-02.1	Funding - Statewide water development projects - Bond issuance amount.....	61-02.1: 3
61-02.1-03	Limitation of action.....	61-02.1: 3
61-02.1-04	Bonds payable from appropriations and other revenues	61-02.1: 3
61-02.1-05	Water development trust fund.....	61-02.1: 5
61-02.1-06	Grand Forks flood control project.....	61-02.1: 5

CHAPTER 61-02.1 FLOOD CONTROL OR REDUCTION PROJECTS

61-02.1-01. Legislative findings and intent - Authority to issue bonds.

1. The legislative assembly finds that some cities suffered serious economic and social injuries due to the major flood disaster in 1997 and other recent floods and are at significant risk for future flooding; and that construction of flood control or reduction projects is necessary for the protection of health, property, and enterprises and for the promotion of prosperity and the general welfare of the people of the state and that construction of any such projects involves and requires the exercise of the sovereign powers of the state and concerns a public purpose. Therefore, it is declared necessary and in the public interest that the state by and through the state water commission assist in financing the costs of constructing flood control or reduction projects through the issuance of bonds.
2. The legislative assembly finds that continued construction of the southwest pipeline project is necessary for the protection of health, property, and enterprises and for the promotion of prosperity and the general welfare of the people of the state and that continued construction of the southwest pipeline project involves and requires the exercise of the sovereign powers of the state and concerns a public purpose. The legislative assembly also finds that current funding for the southwest pipeline project has become uncertain, and therefore, it is declared necessary and in the public interest that the state by and through the state water commission assist in financing the costs of continued construction of the southwest pipeline project through the issuance of bonds.
3. The legislative assembly finds that the Devils Lake basin is suffering and facing a worsening flood disaster; and that construction of an outlet from Devils Lake is necessary for the protection of health, property, and enterprises and for the promotion of prosperity and the general welfare of the people of the state; and that construction of the outlet involves and requires the exercise of the sovereign powers of the state and concerns a public purpose. Therefore, it is declared necessary and in the public interest that an outlet from Devils Lake be constructed with financing from the state water commission to provide flood relief to the Devils Lake basin.
4. The legislative assembly finds that there is a critical need to develop a comprehensive statewide water development program to serve the long-term water resource needs of the state and its people and to protect the state's current usage of, and the state's claim to, its proper share of Missouri River water.
5. In furtherance of the public purpose set forth in subsection 1, the state water commission may issue bonds under chapter 61-02 and the proceeds are appropriated for flood control projects authorized and funded in part by the federal government and designed to provide permanent flood control or reduction to cities that suffered severe damages as a result of the 1997 flood or other recent floods and to repay the line of credit extended to the state water commission under S.L. 1999, ch. 535, § 4. The commission may issue bonds for a flood control or reduction project only:
 - a. When:
 - (1) A flood control or reduction project involves a city that suffered catastrophic flood damage requiring evacuation of the major share of its populace;

- (2) A flood control or reduction project includes interstate features and requires acquisition of private property to build permanent flood protection systems to comply with federal flood protection standards;
 - (3) The governing body of a city provides a written certification to the state water commission that the city has committed itself to contribute one-half or more of the North Dakota project sponsor's share of the nonfederal share of the cost to construct the project;
 - (4) The United States army corps of engineers issues its approval of the flood control or reduction project;
 - (5) A project cooperation agreement, which contains provisions acceptable to the state engineer and is approved by the governor, is entered by the state of Minnesota or one of its political subdivisions in which the flood control or reduction project is to be constructed;
 - (6) A project cooperation agreement, which contains provisions acceptable to the state engineer and is approved by the governor, is entered by the state or one of its political subdivisions in which the flood control or reduction project is to be constructed;
 - (7) The governing body of the city has approved a financing plan for all amounts of the nonfederal share of a flood control or reduction project in excess of the amounts to be paid by the state; and
 - (8) That the flood control or reduction project is designed to be cost-effective and that any impact on residential neighborhoods is minimized in an amount reasonably practicable as determined by the state engineer and approved by the governor;
- b. When a flood control or reduction project in a city with a population as of the 1990 federal decennial census of at least eight thousand and not more than ten thousand has received significant federal funding through federal grants and funds from the United States army corps of engineers and the federal emergency management agency; or
 - c. When a flood control or reduction project in a city with a population as of the 1990 federal decennial census of at least four thousand five hundred and not more than six thousand has at least seventy percent of the land within the boundaries of the city located within the one hundred year floodplain as designated on a flood insurance rate map and the United States army corps of engineers issues its approval of the flood control or reduction project.
6. In furtherance of the public purpose set forth in subsection 2, the state water commission may issue bonds under chapter 61-02 and the proceeds are appropriated for construction of the southwest pipeline project and to repay the line of credit extended to the state water commission under S.L. 1999, ch. 535, § 4. The commission may only issue bonds under this chapter for continued construction of the southwest pipeline project when it is determined that the Perkins County water system will not make payment to the state water commission in the amount of four million five hundred thousand dollars or on January 1, 2000, whichever occurs earlier. If the Perkins County water system makes payment to the state water commission after January 1, 2000, the payment must be used to pay principal and interest on bonds issued for continued construction of the southwest pipeline project as provided in subsection 2 of section 61-02.1-04. If the Perkins County water system does not make payment to the state water commission, no benefits may accrue to the Perkins County water system.

7. In furtherance of the public purposes set forth in subsections 3 and 4, the state water commission may issue bonds under chapter 61-02 to finance the cost of one or more of the projects identified in this section.
8. This chapter does not affect the state water commission's authority to otherwise issue bonds pursuant to chapter 61-02 or section 61-24.3-01.
9. Notwithstanding this section, the state water commission may not issue bonds authorized under subsection 5 for a project unless federal funds have been appropriated for that project.

61-02.1-02. Bond issuance amount limited. Repealed by S.L. 2005, ch. 591, § 4.

61-02.1-02.1. Funding - Statewide water development projects - Bond issuance amount.

1. The priorities for the statewide water development program include municipal, rural, and industrial projects; irrigation projects; general water management projects, including rural flood control, snagging and clearing, channel improvement, recreation, and planning studies; flood control projects; and weather modification projects, which are authorized and declared to be in the public interest. The state water commission may provide the funds necessary to construct these projects from money appropriated to the state water commission from the resources trust fund, the water development trust fund, or by issuing bonds in an amount not to exceed sixty million dollars plus the costs of issuance of the bonds, capitalized interest, and reasonably required reserves. The proceeds of any bonds issued under the authority provided in this section are appropriated to the state water commission for the purposes set forth in this section.
2. If the state water commission determines it is appropriate to do so, it may, in lieu of issuing or in combination with the issuance of bonds pursuant to this section or section 61-02.1-01, for all or part of the state's cost share for the projects set forth in those provisions, use funds appropriated to it from the resources trust fund or the water development trust fund.

61-02.1-03. Limitation of action. An action may not be brought or maintained in any court in this state questioning the validity of any bonds issued as provided in this chapter unless the action is commenced within thirty days after the adoption of the resolution of the state water commission authorizing the sale of the bonds. The state water commission may commence a special proceeding any time after April 19, 1999, in and by which the constitutionality and validity of the bonds to be issued pursuant to this chapter may be judicially examined, approved and confirmed, or disapproved and disaffirmed. Proceedings must comply as nearly as possible with the procedure required for declaratory judgment proceedings.

61-02.1-04. Bonds payable from appropriations and other revenues.

1. Principal and interest on bonds issued for flood control or reduction projects as provided in this chapter are payable from transfers to be made and appropriated by the legislative assembly from the water development trust fund as provided in section 61-02.1-05, then from transfers to be made and appropriated by the legislative assembly from revenues in the resources trust fund other than revenues from state taxes, then from appropriations of other available revenues in the then current biennium, and then from any other revenues the state water commission makes available during the then current biennium for that purpose, including any federal moneys received by the state for the construction of flood control or reduction projects to pay bonds issued for that project. If sufficient funds from these sources are not available, then from transfers to be made and appropriated by the legislative assembly from the first available current biennial earnings of the Bank of North Dakota not to exceed six million five hundred thousand dollars per biennium.

prorated with any other bonds payable from transfers to be made and appropriated by the legislative assembly from the available current biennial earnings of the Bank of North Dakota, to be credited by the trustee to the fund established for paying principal and interest on the bonds under a trust indenture.

2. Principal and interest on bonds issued for continued construction of the southwest pipeline project are payable from transfers to be made and appropriated by the legislative assembly from the water development trust fund as provided in section 61-02.1-05, then from transfers to be made and appropriated by the legislative assembly from revenues in the resources trust fund other than revenues from state taxes, then from appropriations of other available revenues in the then current biennium, or from payment from the Perkins County rural water system, and then from any other revenues the state water commission makes available during the then current biennium for that purpose, including any federal moneys received by the state for the construction of the southwest pipeline project to pay bonds issued for the project. If sufficient funds from these sources are not available, then from transfers to be made and appropriated by the legislative assembly from the first available current biennial earnings of the Bank of North Dakota not to exceed six million five hundred thousand dollars per biennium prorated with any other bonds payable from transfers to be made and appropriated by the legislative assembly from the available current biennial earnings of the Bank of North Dakota, to be credited by the trustee to the fund established for paying principal and interest on the bonds under a trust indenture.
3. Principal and interest on bonds issued under subsection 7 of section 61-02.1-01 are payable from transfers to be made and appropriated by the legislative assembly from the water development trust fund as provided in section 61-02.1-05, then from transfers to be made and appropriated by the legislative assembly from revenues in the resources trust fund other than revenues from state taxes, then from appropriations of other available revenues in the then current biennium, and then from any other revenues the state water commission makes available during the then current biennium for that purpose, including any federal moneys received by the state for the construction of an outlet to Devils Lake to pay bonds issued for that project, or financing a statewide water development program to pay bonds issued for that project. If sufficient funds from these sources are not available, then from transfers to be made and appropriated by the legislative assembly from the first available current biennial earnings of the Bank of North Dakota not to exceed six million five hundred thousand dollars per biennium prorated with any other bonds payable from transfers to be made and appropriated by the legislative assembly from the available current biennial earnings of the Bank of North Dakota, to be credited by the trustee to the fund established for paying principal and interest on the bonds under a trust indenture.
4. Obligations issued as provided in this chapter do not constitute a debt, liability, or obligation of the state of North Dakota or a pledge of the faith and credit of the state of North Dakota, but are payable solely from the sources as described in this chapter.
5. The state water commission shall include in its submission to the governor for inclusion by the governor in the biennial executive budget of the state for each year of the respective biennium during the term of any bonds issued as provided in this chapter an amount fully sufficient to pay the principal and interest required to be paid in each year of the biennium, if any, from moneys from nongeneral fund sources. Provided, that should the governor not include in the executive budget for any reason the amounts required to be included by this section, the state water commission shall request independently that the legislative assembly amend the executive budget appropriation so as to include the amounts.

6. Principal and interest on bonds issued for projects authorized pursuant to section 61-02.1-02.1 are payable from transfers to be made and appropriated by the legislative assembly from the water development trust fund as provided in section 61-02.1-05, then from transfers to be made and appropriated by the legislative assembly from revenues in the resources trust fund other than revenues from state taxes, then from appropriations of other available revenues in the then current biennium, and then from any other revenues the state water commission makes available during the then current biennium for that purpose. If sufficient funds from these sources are not available, then from transfers to be made and appropriated by the legislative assembly from the first available current biennial earnings of the Bank of North Dakota not to exceed six million five hundred thousand dollars per biennium prorated with any other bonds payable from transfers to be made and appropriated by the legislative assembly from the available current biennial earnings of the Bank of North Dakota, to be credited by the trustee to the fund established for paying principal and interest on the bonds under a trust indenture.

61-02.1-05. Water development trust fund. Moneys received by the state pursuant to the 1998 settlement agreement with tobacco product manufacturers, or any successor agreement, and any earnings on these moneys, must be deposited in the water development trust fund in the state treasury for use in paying for bonds issued as provided in this chapter and for other water projects as provided in section 54-27-25 and subsection 23 of section 54-44-04 and for the Red River valley water supply project as provided in chapter 61-24.7.

61-02.1-06. Grand Forks flood control project. Notwithstanding any other provision of law or policy, any existing caps may not be construed to limit access to total state funding of up to fifty-two million dollars for the Grand Forks flood control project.

CHAPTER 61-03 STATE ENGINEER

<u>Section</u>	<u>Page</u>
61-03-01 State engineer - Appointment - Qualifications - Term - Salary - Engaging in private practice	61-03: 1
61-03-02 Oath of state engineer	61-03: 1
61-03-03 Auditing of claims	61-03: 1
61-03-04 Biennial report	61-03: 1
61-03-05 Fees of state engineer	61-03: 1
61-03-05.1 Deposit of certain fees in special fund - Purposes of fund	61-03: 2
61-03-06 Records of state engineer - Open to public - Contents - Certified copies as evidence	61-03: 2
61-03-07 [Repealed]	61-03: 2
61-03-08 Duty of state engineer to cooperate with boards of county commissioners when requested	61-03: 2
61-03-09 [Repealed]	61-03: 3
61-03-10 Custodian of government plats	61-03: 3
61-03-11 [Repealed]	61-03: 3
61-03-12 Attorney general and state's attorney advisers of state engineer	61-03: 3
61-03-13 Rules and regulations made by state engineer - Modification	61-03: 3
61-03-14 Modification of rules and regulations of engineer voted upon only upon appeal from engineer	61-03: 3
61-03-15 Hydrographic surveys and investigations made by state engineer - Cooperating with federal agencies	61-03: 3
61-03-16 Suit for adjudication of water rights	61-03: 3
61-03-17 Parties to and costs of suit for adjudication of water rights	61-03: 3
61-03-18 Hydrographic survey fund - Use - Payments	61-03: 4
61-03-19 Decree adjudicating water rights - Filing - Contents	61-03: 4
61-03-20 State engineer to cooperate with United States geological survey in making topographic maps	61-03: 4
61-03-21 State engineer may require plan of operation - Adequate structure ..	61-03: 4
61-03-21.1 Inspection by state engineer	61-03: 5
61-03-21.2 Removal or modification of unsafe or unauthorized works	61-03: 5
61-03-21.3 Removal, modification, or destruction of dangers in, on the bed of, or adjacent to navigable waters	61-03: 5
61-03-22 Hearing - Appeals from decision of state engineer	61-03: 7
61-03-23 Penalties - Civil	61-03: 7

CHAPTER 61-03 STATE ENGINEER

61-03-01. State engineer - Appointment - Qualifications - Term - Salary - Engaging in private practice. A state engineer shall be appointed by the state water commission. Such engineer shall be a technically qualified and experienced hydraulic engineer and also shall be an experienced irrigation engineer. The state engineer shall serve as secretary and chief engineer of the commission. Such engineer shall hold the office for such term as the commission may determine, and the commission shall fix the state engineer's salary and shall allow the state engineer's actual and necessary traveling expenses while away from the office in the discharge of official duties. The state engineer shall not engage in private practice but shall devote all of the state engineer's time to the duties and requirements of the office.

61-03-02. Oath of state engineer. Before entering upon the duties of office, the state engineer shall take the oath prescribed for civil officers.

61-03-03. Auditing of claims. All claims for services rendered, expenses incurred, or materials or supplies furnished under direction of the state engineer and which are payable from the funds appropriated for the prosecution of the work under the state engineer's direction and supervision, shall be approved by the state engineer.

61-03-04. Biennial report. The state engineer may submit a biennial report to the governor and the secretary of state in accordance with section 54-06-04.

61-03-05. Fees of state engineer. The state engineer shall be paid and receive the following fees to be collected in advance and shall be paid by the state engineer into the general fund of the state treasury:

1. Repealed by S.L. 1977, ch. 569, § 27.
2. For recording any permit, certificate of construction or license issued, or any other water right instrument, two dollars for the first hundred words and twenty-five cents for each additional hundred words or fraction thereof.
3. For filing any other paper two dollars.
4. For issuing a certificate of construction or a license to appropriate water three dollars each.
5. For providing computer disks or copies of documents, including copies of blueprints of maps or drawings, government land office plats, benchmark books, survey notes, and water laws, a reasonable fee to be determined by the state engineer.
6. For transmitting documents electronically, a reasonable fee to be determined by the state engineer.
7. For certifying copies, two dollars for each certificate.
8. For examining and approving in connection with water right applications, plans and specifications for any dam, not exceeding ten feet [3.05 meters] in extreme height from the foundation, twenty dollars, for a dam higher than ten feet [3.05 meters] and not exceeding thirty feet [9.14 meters], forty dollars, for a dam higher than thirty feet [9.14 meters] and not exceeding fifty feet [15.24 meters], fifty dollars, and for a dam higher than fifty feet [15.24 meters], seventy-five dollars.
9. For examining and approving in connection with water right applications, plans and specifications for a canal or other water conduit of an estimated capacity exceeding fifty and not more than one hundred cubic feet [1.42 and not more than 2.83 cubic

meters] per second, forty dollars, and for a canal or other water conduit exceeding one hundred cubic feet [2.83 meters] per second, sixty dollars.

10. For inspecting damsites and construction work when required by law, or when necessary in the judgment of the state engineer, twenty-five dollars per day and actual and necessary traveling expenses. The fees for any inspection deemed necessary by the state engineer and not paid on demand shall be a lien on any land or other property of the owner of the works, and may be recovered by the state engineer in any court of competent jurisdiction.
11. Rating ditches or inspection plans and specification of works for the diversion, storage, and carriage of water, at the request of private parties, not in connection with an application for the right to appropriate water, actual cost and expenses. The state engineer shall attach the state engineer's approval to such plans and specifications if found satisfactory.
12. For such other work as may be required of the state engineer's office, the fees provided by law.
13. For testifying personally in civil litigation involving private parties, or through the engineer's employees, in response to a subpoena in a case in which the engineer is not a party, the actual cost incurred, including mileage and travel expenses reimbursement, equal to the reimbursement rates provided for state employees in sections 44-08-04 and 54-06-09.

In ascertaining the actual cost of any work as the term is used in this section, the salary of any salaried officer for the time employed shall be included.

61-03-05.1. Deposit of certain fees in special fund - Purposes of fund. All fees collected by the state engineer pursuant to sections 61-04-04.1 and 61-04-06.2 shall be deposited in the state treasury in a special fund to be known as the water use fund, and shall be used only for planning, research, and administration required to properly regulate the allocation and appropriation of the waters of North Dakota. The water use fund may be expended subject to appropriation by the legislative assembly for the purpose of meeting the costs directly incurred in conducting the planning and administration required for the proper regulation of the allocation and appropriation of the waters of the state.

61-03-06. Records of state engineer - Open to public - Contents - Certified copies as evidence. The records of the office of the state engineer are public records, shall remain on file in the state engineer's office, and shall be open to the inspection of the public at all times during business hours. Such records shall show in full all permits, certificates of completion of construction, and licenses issued, together with all action thereon, and all action or decisions of the state engineer affecting any rights or claims to appropriate water. Certified copies of any records or papers on file in the office of the state engineer shall be evidence equally with the originals thereof, and when introduced as evidence shall be held as of the same validity as the originals.

61-03-07. Investigations and reports for board of university and school lands.
Repealed by S.L. 1989, ch. 747, § 1.

61-03-08. Duty of state engineer to cooperate with boards of county commissioners when requested. Whenever requested so to do by the board of county commissioners of any county of this state, the state engineer shall cooperate with such board in the engineering work required to lay out, establish, and construct any drain to be used by any county or counties or portions of the same for the purpose of diverting floodwaters, lakes, or watercourses, and in general shall aid and assist the counties of this state in making preliminary surveys and establishing systems of drainage.

61-03-09. State engineer's duties in construction of bridges and culverts. Repealed by S.L. 1989, ch. 747, § 1.

61-03-10. Custodian of government plats. The state engineer shall be custodian of all plats, field notes, and records that have been or hereafter may be turned over to the state by the government. Suitable rooms shall be provided in the capitol building containing vaults for fireproof protection and the safekeeping of such records, and free access to any such field notes, maps, records, and other papers for the purpose of taking extracts therefrom or making copies thereof without charge of any kind, shall be allowed to all officers or employees of the United States during office hours.

61-03-11. Furnishing copies. Repealed by S.L. 1993, ch. 595, § 2.

61-03-12. Attorney general and state's attorney advisers of state engineer. The attorney general, and the state's attorney of the county in which legal questions arise, shall be the legal advisers of the state engineer, and shall perform any and all legal duties necessary in connection with the state engineer's work, without compensation other than their salaries as fixed by law, except when otherwise provided.

61-03-13. Rules and regulations made by state engineer - Modification. The state engineer shall make all general rules necessary to carry into effect the duties devolving upon the state engineer's office, and may change the same from time to time. All such rules relating to applications for permits to appropriate water, for the inspection of works, for the issuance of licenses, and for the determination of rights to the use of water, shall be modified by the state engineer, if required by a vote of the state water commission.

61-03-14. Modification of rules and regulations of engineer voted upon only upon appeal from engineer. The modification of the rules and regulations of the state engineer provided for in section 61-03-13 shall be voted upon by the state water commission only on an appeal from a decision of the state engineer.

61-03-15. Hydrographic surveys and investigations made by state engineer - Cooperating with federal agencies. The state engineer shall make hydrographic surveys and investigations of each stream system and source of water supply in the state, beginning with those most used for irrigation, and shall obtain and record all available data for the determination, development, and adjudication of the water supply of the state. The state engineer may cooperate with the agencies of the federal government engaged in similar surveys and investigations and in the construction of works for the development and use of the water supply of the state, expending for such purposes any money available for the work of the state engineer's office. The state engineer may accept and use, in connection with the operation of the state engineer's department, the results of the work of the agencies of the government.

61-03-16. Suit for adjudication of water rights. Upon the completion of a hydrographic survey of any stream system, the state engineer shall deliver a copy thereof, together with copies of all data necessary for the determination of all rights to the use of the waters of such system, to the attorney general of the state, who, within sixty days thereafter, shall enter suit on behalf of the state for the determination of all rights to the use of such water, and shall prosecute the same to a final adjudication. If the suit for the adjudication of such rights shall have been begun by private parties, the attorney general shall not be required to bring suit, except that the attorney general shall intervene in any suit for the adjudication of rights to the use of water, on behalf of the state, if notified by the state engineer that, in the state engineer's opinion, the public interest requires such action.

61-03-17. Parties to and costs of suit for adjudication of water rights. In any suit for the determination of a right to the use of the waters of any stream system, all who claim the right to use such waters shall be made parties. When any suit has been filed, the court, by its order duly entered, shall direct the state engineer to make or furnish a complete hydrographic survey of such stream system as is provided in this chapter, in order to obtain all data necessary to the determination of the rights involved. The cost of such suit, including the costs on behalf of the

state, and of such surveys, shall be charged against each of the private parties thereto in proportion to the amount of the water right allotted.

61-03-18. Hydrographic survey fund - Use - Payments. The hydrographic survey fund, a permanent fund, shall be used only for the payment of the expenses of the surveys ordered by the court as provided in section 61-03-17. All claims for services rendered, expenses incurred, or materials or supplies furnished under the direction of the state engineer in the prosecution of such surveys shall be approved by the state engineer. The amounts paid by the parties to such suits, on account of such surveys, shall be paid to the state treasurer, who shall credit the same to such fund, which shall continue to be available for advancing the expenses of such surveys, as ordered by the court from time to time.

61-03-19. Decree adjudicating water rights - Filing - Contents. Upon the adjudication of the rights to the use of the waters of a stream system, a certified copy of the decree shall be prepared by the clerk of the court, at the cost of the parties, and shall be filed in the office of the state engineer. Such decree, in every case, shall declare as to the water right adjudged to each party, the priority, amount, purpose, and place of use, and, as to water used for irrigation, the specific tracts of land to which it shall be appurtenant, together with such other conditions as may be necessary to define the right and its priority.

61-03-20. State engineer to cooperate with United States geological survey in making topographic maps. The state engineer may confer with the director of the United States geological survey and may accept the cooperation of the United States with this state in the execution of topographic surveys and maps of this state. The state engineer may arrange with the director or other authorized representative of the United States geological survey concerning the details of such work, the method of its execution, and the order in which these surveys and maps of different parts of the state shall be undertaken. In any such work the director of the United States geological survey shall agree to expend on the part of the United States upon said work a sum equal to that appropriated by the state from time to time for this purpose. In arranging these details the state engineer, in addition to such other provisions as the state engineer may deem wise, shall require that the maps resulting from this survey show the outlines of all counties, towns, and extensive wooded areas, as existing on the ground at the time of the execution of the survey, the location of all railways, roads, streams, canals, lakes, and rivers, and contain contour lines showing the elevation and depression for at least every twenty feet [6.10 meters] in vertical interval of the surface of the country. The resulting map must recognize wholly the cooperation of the state of North Dakota, and as each manuscript sheet of the map is completed the United States geological survey should furnish the state engineer with photographic copies of the same. As the engraving on each sheet is completed the director shall furnish the state engineer with transfers from the copperplates of the same.

61-03-21. State engineer may require plan of operation - Adequate structure. Every operator of a water storage reservoir in North Dakota having a capacity of more than one thousand acre-feet [1233481.84 cubic meters] shall annually, between the first and fifteenth day of February, file with the state engineer an operating plan for such reservoir for the calendar year in which the same is filed. The operator of any such reservoir shall be required to cooperate with the state engineer to the end that all water releases shall be compatible with the best interest of the greatest number of downstream water users and affected landowners. In the event that the state engineer declares an emergency to exist in connection with the operation of any such reservoir, the operator thereof shall promptly submit to the state engineer a separate interim operating plan therefor in addition to the annual reservoir operating plan herein required. Such interim operating plan shall then be coordinated and integrated with the suggestions and plans of the state engineer to best serve the affected interests during such emergency. The state engineer may also require such operators to maintain adequate structures and to operate them in a manner that will prevent waste, promote the beneficial use of water, and not endanger the general health and welfare of persons affected thereby. In the event such operator fails to maintain and operate adequate structures in the manner provided in this section, the state engineer shall set a place and time for hearing and shall serve notice upon such operator to show cause at such time and place why the operator's water permit should not be declared terminated and canceled. A copy of any order terminating or canceling such water right shall be

filed in the office of the recorder in the county or counties where the land to which the right is appurtenant is located. An appeal may be taken from the decision of the state engineer in accordance with the provisions of chapter 28-32.

61-03-21.1. Inspection by state engineer. Whenever the state engineer is authorized or mandated by law to inspect or investigate an alleged violation of a statute under this title, the state engineer shall have the authority to enter upon land for the purposes of conducting such an inspection or investigation. Except in emergency situations as determined by the state engineer, the state engineer shall request written permission from the landowner to enter the property. If the landowner refuses to give written permission, or fails to respond within five days of the request, the state engineer may request the district court of the district containing the property for an order authorizing the state engineer to enter the property to inspect or investigate the alleged violation.

61-03-21.2. Removal or modification of unsafe or unauthorized works. If the state engineer pursuant to the state engineer's authority under this title determines that works are unsafe or unauthorized, the state engineer shall notify the landowners by registered mail at the landowner's last-known post-office address of record. A copy of the notice must also be sent to any tenant, if the state engineer has actual knowledge of the fact that a tenant exists. The notice must specify the nature and extent of the noncompliance, the modifications necessary for compliance, and must state that if the works are not modified or removed within the period stated in the notice, but not less than thirty days, the state engineer shall cause the removal or modification of the works and assess the cost thereof, or such portion as the state engineer shall determine, against the property of the landowner responsible. The notice must also state that the affected landowner may, within fifteen days of the date the notice is mailed, demand, in writing, a hearing upon the matter. The request for a hearing must state with particularity the issues, facts, and points of law to be presented at the hearing. If the state engineer determines the issues, facts, and law to be presented are well founded and are not frivolous and the request for a hearing was not made merely to interpose delay, the state engineer shall set a hearing date without undue delay. In the event of an emergency, the state engineer may immediately apply to the appropriate district court for an injunction prohibiting the landowner or tenant from constructing or maintaining the works, or ordering the landowner to remove or modify the works. Any assessments levied under the provisions of this section must be collected in the same manner as other assessments authorized by this title. If, in the opinion of the state engineer, more than one landowner or tenant has been responsible, the costs may be assessed on a pro rata basis in proportion to the responsibility of the landowners. Any person aggrieved by action of the state engineer under the provisions of this section may appeal the decision of the state engineer to the district court of the county in which the land is located in accordance with the procedures provided under chapter 28-32. A hearing as provided for in this section is a prerequisite to an appeal, unless the hearing was denied by the state engineer.

For purposes of this section, the term "works" includes dams, dikes, wells, or other devices for water conservation, flood control, regulation, storage, diversion, or carriage of water.

61-03-21.3. Removal, modification, or destruction of dangers in, on the bed of, or adjacent to navigable waters.

1. If the state engineer finds that buildings, structures, boat docks, debris, or other manmade objects, except a fence or corral, situated in, on the bed of, or adjacent to waters that have been determined to be navigable by a court are, or are imminently likely to be, a menace to life or property or public health or safety, the state engineer shall issue an order to the person responsible for the object. The order must specify the nature and extent of the conditions, the action necessary to alleviate, avert, or minimize the danger, and a date by which that action must be taken. If the state engineer determines that an object covered by flood insurance is imminently likely to be a menace to life or property or public health or safety, the date specified in the order for action to be taken may not precede the date on which the person is eligible to receive flood insurance proceeds. If a building, structure, boat dock, debris, or other manmade object, except a fence or corral, is partially or completely

submerged due to the expansion of navigable waters, the person responsible is the person who owns or had control of the property on which the object is located or the person who owned or had control of the property immediately before it became submerged by water.

2. If the action is not taken by the date specified, but not less than twenty days from the date of service of the notice, the state engineer may cause the action to be taken. The state engineer may require the action to be taken in less than twenty days if an emergency exists.
3. The state engineer may bring an action to enforce an order of the state engineer, or if the state engineer causes the action to be taken, the state engineer may:
 - a. Assess the costs of taking such action, or such portion as the state engineer determines, against any property of the person responsible; or
 - b. Bring a civil action against the person responsible to recover the costs incurred in taking the action.

If the state engineer chooses to recover costs by assessing the cost against property of the person responsible and the property is insufficient to cover the costs incurred, the state engineer may bring a civil action to recover any costs not recovered through the assessment process. Any assessments levied under this section must be collected in the same manner as other real estate taxes are collected and paid. Any costs recovered must be deposited in the fund from which the expenses were paid.

4. A person who receives an order, within ten days of the date of service of the order, may demand, in writing, a hearing on the matter. The demand for a hearing must state with particularity the issues, facts, and points of law to be presented at the hearing. If the state engineer determines the issues, facts, and law to be presented are well-founded and not frivolous, and the request for a hearing was not made merely to interpose delay, the state engineer shall set a hearing date without undue delay.
5. In the event of an emergency, the state engineer may immediately apply to the district court of the county in which the property is located for an injunction ordering the person responsible to modify, remove, abate, or otherwise eliminate the dangerous condition.
6. Any person aggrieved by the action of the state engineer may appeal the decision to the district court of the county in which the land is located in accordance with chapter 28-32. A hearing as provided for in this section is a prerequisite to an appeal unless the hearing was denied by the state engineer.
7. If the state engineer has issued an order under this section with regard to a building, structure, boat dock, debris, or other manmade object that the state engineer has determined is imminently likely to be a menace to life or property or public health or safety, and it later becomes known that the object would not have become a menace, a person who has taken action required by the state engineer's order is entitled to compensation in an amount equal to the value of any property destroyed and reasonable costs incurred as a result of complying with the state engineer's notice.
8. Any person claiming compensation for the destruction of property or costs incurred under subsection 7 must file a claim with the state engineer in the form and manner required by the state engineer. Unless the amount of compensation is agreed to between the claimant and the state engineer, the amount of compensation must be calculated in the same manner as compensation due for taking of property pursuant

to the condemnation laws of this state. In determining compensation, the proceeds of any flood or other insurance or any other kind of compensatory payments must be subtracted from the amount paid.

61-03-22. Hearing - Appeals from decision of state engineer. Except as more specifically provided in this title, any person aggrieved because of any action or decision of the state engineer under the provisions of this title has the right to a hearing by the state engineer if no hearing on the matter resulting in the action or decision has been held. If a hearing has been held, the person aggrieved has the right to petition for reconsideration and to appeal, all in accordance with the provisions of chapter 28-32.

61-03-23. Penalties - Civil. In addition to criminal sanctions that may be imposed pursuant to law, a person who knowingly violates any provision of this title or any rules adopted under this title may be assessed a civil penalty not to exceed five thousand dollars for each day the violation occurred and continues to occur and may be required by the state engineer to forfeit any right to the use of water. The civil penalty or forfeiture of a right to use water may be adjudicated by the courts or by the state engineer through an administrative hearing under chapter 28-32.

If a civil penalty levied by the state engineer after an administrative hearing is not paid within thirty days after a final determination that the civil penalty is owed, the civil penalty may be assessed against the property of the landowner responsible for the violation leading to the assessment of the penalty. The assessment must be collected as other assessments made under this title are collected. Notwithstanding the provisions of section 57-20-22, all interest and penalties due on the assessment must be paid to the state. Any civil penalty assessed under this section must be in addition to any costs incurred by the state engineer for enforcement of the order.

CHAPTER 61-04 APPROPRIATION OF WATER

<u>Section</u>	<u>Page</u>
61-04-01 Petitions, reports, surveys, and other documents filed in office of commission	61-04: 1
61-04-01.1 Definitions	61-04: 1
61-04-01.2 Right to use water - Basis	61-04: 2
61-04-02 Permit for beneficial use of water required	61-04: 2
61-04-02.1 Emergency or temporary authorization	61-04: 2
61-04-03 Application for water permit - Contents - Information to accompany	61-04: 2
61-04-03.1 Limitation on amount of water	61-04: 2
61-04-04 Filing and correction of application	61-04: 2
61-04-04.1 Application fees	61-04: 3
61-04-04.2 Refund of water permit application fees	61-04: 3
61-04-05 Notice of application - Contents - Proof - Failure to file satisfactory proof	61-04: 3
61-04-05.1 Comments - Hearing	61-04: 4
61-04-06 Criteria for issuance of permit	61-04: 5
61-04-06.1 Preference in granting permits	61-04: 5
61-04-06.2 Terms of permit	61-04: 5
61-04-06.3 Priority	61-04: 6
61-04-07 Rejection of applications - Appeal to district court	61-04: 6
61-04-07.1 [Repealed]	61-04: 6
61-04-08 [Repealed]	61-04: 6
61-04-09 Application to beneficial use - Inspection - Perfected water permit	61-04: 6
61-04-10 [Repealed]	61-04: 6
61-04-11 Inspection of works	61-04: 6
61-04-12 Use of unsafe works - Penalty	61-04: 7
61-04-13 [Repealed]	61-04: 7
61-04-14 Extending time for application to beneficial use	61-04: 7
61-04-15 Assignment or transfer of conditional or perfected water permit	61-04: 7
61-04-15.1 Change in point of diversion or use	61-04: 7
61-04-16 [Repealed]	61-04: 8
61-04-17 Surplus water to be delivered to persons entitled to beneficial use - Charges - Compelling delivery	61-04: 8
61-04-18 [Repealed]	61-04: 8
61-04-19 [Repealed]	61-04: 8
61-04-20 [Repealed]	61-04: 8
61-04-21 [Repealed]	61-04: 8
61-04-22 Prescriptive water right	61-04: 8
61-04-23 Forfeiture of water rights - Inspection of works	61-04: 8
61-04-24 Forfeiture of water rights - Notice - Contents	61-04: 8
61-04-25 Forfeiture of water rights - Hearing - Appeal	61-04: 9

61-04-26	Recorder to record water permit or order affecting water right.....	61-04: 9
61-04-27	Information filed with state engineer - Installation of measuring devices	61-04: 10
61-04-28	Correction of application or water right by state engineer	61-04: 10
61-04-29	Enforcement.....	61-04: 10
61-04-30	Penalty	61-04: 10
61-04-31	Reservation of waters - Public hearing - Notice	61-04: 10
61-04-32	Damages for illegal diminishment of water supply	61-04: 11

CHAPTER 61-04 APPROPRIATION OF WATER

61-04-01. Petitions, reports, surveys, and other documents filed in office of commission. Any petitions, applications, surveys, reports, orders, or other documents provided for in this chapter shall be filed in the office of the commission in the city of Bismarck, where they shall be kept on file under the control of the state engineer.

61-04-01.1. Definitions. In this chapter, unless the context or subject matter otherwise requires:

1. "Beneficial use" means a use of water for a purpose consistent with the best interests of the people of the state.
2. "Commission" means the state water commission.
3. "Domestic use" means the use of water by an individual, or by a family unit, or household, for personal needs and for household purposes, including, but not limited to heating, drinking, washing, sanitary and culinary uses; irrigation of land not exceeding one acre [.40 hectare] in area for noncommercial gardens, orchards, lawns, trees, or shrubbery; and for household pets and domestic animals kept for household sustenance and not for sale or commercial use, when the water is supplied by the individual or family unit. Also included within this use are "domestic rural uses" which must be defined by the state engineer by rule.
4. "Fish, wildlife, and recreation" means the use of water for the purposes of propagating and sustaining fish and wildlife resources and for the development and maintenance of water areas necessary for outdoor recreation activities.
5. "Industrial use" means the use of water for the furtherance of a commercial enterprise wherever located, including but not limited to manufacturing, mining, or processing.
6. "Irrigation use" means the use of water for application to more than one acre [.40 hectare] of land to stimulate the growth of agricultural crops or the maintenance of recreation areas such as athletic fields, golf courses, parks, and similar types of areas, except when the water for the facility is provided by a municipal water system.
7. "Livestock use" means the use of water for drinking purposes by herds, flocks, or bands of animals, kept for commercial purposes.
8. "Municipal or public use" means the use of water by the state through its political subdivisions, institutions, facilities, and properties, and the inhabitants thereof, or by unincorporated communities, subdivision developments, rural water systems, and other entities, whether supplied by the government or by a privately owned public utility or other agency or entity, for primarily domestic purposes, as defined herein.
9. "Person" includes political subdivisions, corporations, limited liability companies, partnerships, associations, the United States and its departments or agencies, the state of North Dakota and its departments or agencies, and any other legal entity.
10. "Rural water system" means a water supply system designed to serve regional needs.
11. "Water of the state" or "waters of the state" means those waters identified in section 61-01-01.

61-04-01.2. Right to use water - Basis. A right to appropriate water can be acquired for beneficial use only as provided in this chapter. Beneficial use shall be the basis, the measure, and the limit of the right to the use of water.

61-04-02. Permit for beneficial use of water required. Any person, before commencing any construction for the purpose of appropriating waters of the state or before taking waters of the state from any constructed works, shall first secure a water permit from the state engineer unless such construction or taking from such constructed works is for domestic or livestock purposes or for fish, wildlife, and other recreational uses or unless otherwise provided by law. However, immediately upon completing any constructed works for domestic or livestock purposes or for fish, wildlife, and other recreational uses the water user shall notify the state engineer of the location and acre-feet [1233.48 cubic meters] capacity of such constructed works, dams, or dugouts. Regardless of proposed use, however, all water users shall secure a water permit prior to constructing an impoundment capable of retaining more than twelve and one-half acre-feet [15418.52 cubic meters] of water or the construction of a well from which more than twelve and one-half acre-feet [15418.52 cubic meters] of water per year will be appropriated. If a permit is not required of a landowner or the landowner's lessee to appropriate less than twelve and one-half acre-feet [15418.52 cubic meters] of water from any source for domestic or livestock purposes or for fish, wildlife, and other recreational uses, those appropriators may apply for water permits in order to clearly establish a priority date; the state engineer may waive any fee or hearing for such applications. An applicant for a water permit to irrigate need not be the owner of the land to be irrigated.

61-04-02.1. Emergency or temporary authorization. The state engineer may authorize emergency or temporary use of water for periods not to exceed twelve months if the state engineer determines such use will not be to the detriment of existing rights. The state engineer shall establish by rule a separate procedure for the processing of applications for emergency or temporary use. No prescriptive or other rights to the use of water shall be acquired by use of water as authorized herein.

61-04-03. Application for water permit - Contents - Information to accompany. The application for a permit to make beneficial use of any waters of the state shall be in the form required by the rules established by the state engineer. Such rules shall prescribe the form and contents of, and the procedure for filing, the application. The application, along with all other information filed with it, shall be retained in the office of the commission after approval or disapproval of the application. The state engineer may require additional information not provided for in the general rules if the state engineer deems it to be necessary.

61-04-03.1. Limitation on amount of water. An individual may not apply for a permit or permits for irrigation which, if approved, would enable the individual, at any one time, to hold a conditional permit or permits for more than seven hundred twenty acre-feet [888106.75 cubic meters] of water which has not been applied to beneficial use. Applications submitted in violation of this section shall not be assigned a priority date and shall be returned to the applicant by the state engineer. This section shall not apply to applications for water permits from the Missouri River or to applications submitted by irrigation districts organized pursuant to this title. For the purposes of this section, an individual means any person, including the person's spouse, and dependents thereof within the meaning of the Internal Revenue Code [26 U.S.C. 152].

61-04-04. Filing and correction of application. The date of the receipt of the application provided for in section 61-04-03 in the commission office shall be noted thereon. If the application is defective as to form, incomplete, or otherwise unsatisfactory, it shall be returned with a statement of the corrections, amendments, or changes required, within thirty days after its receipt, and sixty days shall be allowed for the refiling thereof. If the application is corrected as required and is refiled within such time, it, upon being accepted, shall take priority as of the date of its original filing. Any corrected application filed after the time allowed shall be treated in all respects as an original application received on the date of its refiling. The application may be amended by the applicant at any time prior to the commencement of administrative action by the state engineer as provided in sections 61-04-05 through 61-04-07.

61-04-04.1. Application fees. The following fees must accompany an application and must be paid by the state engineer into the water use fund of the state treasury:

- | | |
|---|-------|
| 1. For municipal or public use in municipalities or other entities of 2,500 population or over according to the latest federal census | \$500 |
| 2. For municipal or public use in municipalities or other entities of less than 2,500 population according to the latest federal census | \$250 |
| 3. For irrigation | \$200 |
| 4. For industrial use of one c.f.s. or less, or seven hundred twenty-four acre-feet [893039.52 cubic meters] or less | \$250 |
| 5. For industrial use in excess of one c.f.s., or in excess of seven hundred twenty-four acre-feet [893039 52 cubic meters] | \$750 |
| 6. For recreation, livestock, or fish and wildlife | \$100 |
| 7. For commercial recreation | \$200 |
| 8. Water permit amendment | \$ 50 |

61-04-04.2. Refund of water permit application fees. The state engineer may refund a water permit application fee, upon the request of the applicant, if the application is withdrawn by the applicant, and:

1. The state engineer has not published notice of the application; or
2. The state engineer determines other good and sufficient cause exists to refund the application fee.

61-04-05. Notice of application - Contents - Proof - Failure to file satisfactory proof. When an application is filed which complies with this chapter and the rules adopted under this chapter, the state engineer shall instruct the applicant to:

1. Give notice of the application by certified mail in the form prescribed by rule, to all record title owners of real estate within a radius of one mile [1.61 kilometers] from the location of the proposed water appropriation site, except:
 - a. If the one-mile [1.61-kilometer] radius extends within the geographical boundary of a city, the notice must be given to the governing body of the city and no further notice need be given to the record title owners of real estate within the geographical boundary of the city.
 - b. If the one-mile [1.61-kilometer] radius includes land within the geographical boundary of a rural subdivision where the lots are of ten acres [4.04 hectares] or less, the notice must be given to the governing body of the township or other governing authority for the rural subdivision and no further notice need be given to the record title owners of real estate within the geographical boundary of the rural subdivision.
 - c. If the one-mile [1.61-kilometer] radius includes a single tract of rural land which is owned by more than ten individuals, the notice must be given to the

governing body of the township or other governing authority for that tract of land and no further notice need be given to the record title owners of that tract.

2. Give notice of the application by certified mail in the form prescribed by rule to all persons holding water permits for the appropriation of water from appropriation sites located within a radius of one mile [1.61 kilometers] from the location of the proposed water appropriation site. The state engineer shall provide a list of all persons who must be notified under this subsection to the applicant.
3. Give notice of the application by certified mail in the form prescribed by rule to all municipal or public use water facilities within a twelve-mile radius of the proposed water appropriation site. The state engineer shall provide a list of all municipal or public use water facilities that must be notified under this subsection to the applicant.
4. Provide the state engineer with an affidavit of notice by certified mail within sixty days from the date of the engineer's instructions to provide notice. If the applicant fails to file satisfactory proof of notice by certified mail within sixty days and in compliance with the applicable rules, the state engineer shall treat the application as an original application filed on the date of receipt of the affidavit of notice by certified mail in proper form. Upon receipt of a proper affidavit of notice by certified mail, the state engineer shall publish notice of the application, in a form prescribed by rule, in the official newspaper of the county in which the proposed appropriation site is located, once a week for two consecutive weeks.
5. The notice must give all essential facts as to the proposed appropriation, including the places of appropriation and of use, amount of water, the use, the name and address of the applicant, and the date by which written comments regarding the proposed appropriation must be filed with the state engineer. The notice must also state that anyone who files written comments with the state engineer will be mailed a copy of the state engineer's recommended decision on the application.
6. The applicant shall pay all costs of the publication of notice.

61-04-05.1. Comments - Hearing.

1. Comments regarding a proposed appropriation must be in writing and filed by the date specified by the state engineer under subsection 5 of section 61-04-05. The comments must state the name and address of the person filing the comments.
2. The state engineer shall consider all written comments received and shall recommend in writing approval or disapproval of the application or that the application be held in abeyance. A copy of the recommended decision must be mailed to the applicant and any person who filed written comments.
3. Within thirty days of service of the recommended decision, the applicant and any person who would be aggrieved by the decision and who filed written comments may file additional written comments with the state engineer or request a hearing on the application, or both. A request for a hearing must be made in writing and must state with particularity how the person would be aggrieved by the decision and the issues and facts to be presented at the hearing. If a request for a hearing is not made, the state engineer shall consider the additional comments, if any are submitted, and issue a final decision. If a request for a hearing is made, or if the state engineer determines a hearing is necessary to obtain additional information to evaluate the application or to receive public input, the state engineer shall designate a time and place for the hearing and serve a copy of the notice of hearing upon the applicant and any person who filed written comments. Service must be made in the manner allowed for service under the North Dakota Rules of Civil Procedure at least twenty days before the hearing.

4. If two or more municipal or public use water facilities request the hearing to be held locally, the state engineer shall hold the hearing in the county seat of the county in which the proposed water appropriation site is located.

61-04-06. Criteria for issuance of permit. The state engineer shall issue a permit if the state engineer finds all of the following:

1. The rights of a prior appropriator will not be unduly affected.
2. The proposed means of diversion or construction are adequate.
3. The proposed use of water is beneficial.
4. The proposed appropriation is in the public interest. In determining the public interest, the state engineer shall consider all of the following:
 - a. The benefit to the applicant resulting from the proposed appropriation.
 - b. The effect of the economic activity resulting from the proposed appropriation.
 - c. The effect on fish and game resources and public recreational opportunities.
 - d. The effect of loss of alternate uses of water that might be made within a reasonable time if not precluded or hindered by the proposed appropriation.
 - e. Harm to other persons resulting from the proposed appropriation.
 - f. The intent and ability of the applicant to complete the appropriation.

Subsection 1 of section 28-32-38 does not apply to water permit application proceedings unless a request for a hearing is made. If an application is approved, the state engineer shall issue a conditional water permit allowing the applicant to appropriate water. Provided, however, the commission may, by resolution, reserve unto itself final approval authority over any specific water permit in excess of five thousand acre-feet [6167409.19 cubic meters]. The state engineer may cause a certified transcript to be prepared for any hearing conducted pursuant to this section. The costs for the original and up to nine copies of the transcript must be paid by the applicant.

61-04-06.1. Preference in granting permits. When there are competing applications for water from the same source, and the source is insufficient to supply all applicants, the state engineer shall adhere to the following order of priority:

1. Domestic use.
2. Municipal use.
3. Livestock use.
4. Irrigation use.
5. Industrial use.
6. Fish, wildlife, and other outdoor recreational uses.

61-04-06.2. Terms of permit. The state engineer may issue a conditional permit for less than the amount of water requested, but in no case may the state engineer issue a permit for more water than can be beneficially used for the purposes stated in the application except that water permits for incorporated municipalities or rural water systems may contain water in excess of present needs if based upon reasonable projections of future water needs of the municipality or the rural water system. The state engineer may require modification of the plans and

specifications for the appropriation. The state engineer may issue a permit subject to fees for water use, terms, conditions, restrictions, limitations, and termination dates the state engineer considers necessary to protect the rights of others and the public interest. Conditions and limitations so attached must be related to matters within the jurisdiction of the state engineer; provided, however, that all conditions attached to any permit issued prior to July 1, 1975, are binding upon the permittee.

61-04-06.3. Priority. Priority in time shall give the superior water right. Priority of a water right acquired under this chapter dates from the filing of an application with the state engineer, except for water applied to domestic, livestock, or fish, wildlife, and other recreational uses in which case the priority date shall relate back to the date when the quantity of water in question was first appropriated, unless otherwise provided by law.

Priority of appropriation does not include the right to prevent changes in the condition of water occurrence, such as the increase or decrease of streamflow, or the lowering of a water table, artesian pressure, or water level, by later appropriators, if the prior appropriator can reasonably acquire the prior appropriator's water under the changed conditions.

61-04-07. Rejection of applications - Appeal to district court. If the state engineer determines that an application does not meet the criteria prescribed in section 61-04-06, the state engineer shall reject the application. The state engineer shall decline to order the publication of notice of any application which does not comply with the requirements of the law and the rules thereunder. Any applicant, within sixty days from the date of refusal to approve an application, may appeal to the district court of the county in which the proposed place of diversion or storage is situated, from any decision of the state engineer which denies a substantial right. In the absence of such appeal, the decision of the state engineer shall be final.

61-04-07.1. Approval of applications with conditions. Repealed by S.L. 1977, ch. 569, § 27.

61-04-08. Prosecution of work - State engineer may approve another application upon failure of original applicant to complete - Exception. Repealed by S.L. 1965, ch. 447, § 24.

61-04-09. Application to beneficial use - Inspection - Perfected water permit. On or before the date set for the application of the water to a beneficial use, or upon notice from the owner that water has been applied to a beneficial use, the state engineer shall cause the works to be inspected, after due notice to the holder of the conditional water permit. Such inspection shall be thorough and complete, in order to determine the actual capacity of the works, its safety, and efficiency. If the works are not properly and safely constructed, the state engineer may require the necessary changes to be made within such time as the state engineer deems reasonable and shall not issue a perfected water permit until such changes are made. Failure to make the changes within the time prescribed by the state engineer shall cause postponement of the priority under the water permit to the date the changes are actually made to the satisfaction of the state engineer, and any intervening application submitted prior to the date the changes are actually made may have the benefit of such postponement of priority. When the works are found in satisfactory condition, after inspection, the state engineer shall issue the perfected water permit, setting forth the actual capacity of the works and such limitations or conditions upon the water permit as stated in the conditional water permit as authorized by section 61-04-06.2; provided, however, that all conditions attached to any permit issued prior to July 1, 1975, shall be binding upon the permittee.

61-04-10. Certificate of construction issued when works found in satisfactory condition - Contents. Repealed by S.L. 1965, ch. 447, § 24.

61-04-11. Inspection of works. If the state engineer, in the course of the state engineer's duties, shall find that any works used for the storage, diversion, or carriage of water are unsafe and a menace to life or property, the state engineer at once shall notify the owner or the owner's agent, specifying the changes necessary and allowing a reasonable time for putting

the works in safe condition. Upon the request of any party, accompanied by the estimated cost of inspection, the state engineer shall cause any alleged unsafe works to be inspected. If they shall be found unsafe by the state engineer, the money deposited by such party shall be refunded, and the fees for inspection shall be paid by the owner of such works. If such fees are not paid by the owner of such works within thirty days after the decision of the state engineer, they shall be a lien against any property of such owner and shall be recovered by a suit instituted by the state's attorney of the county at the request of the state engineer. The state engineer, when in the state engineer's opinion it is necessary, may inspect any works under construction for the storage, diversion, or carriage of water and may require any changes necessary to secure their safety. The fees for such inspection shall be a lien on any property of the owner and shall be subject to collection as provided in this chapter but neither the United States nor the state of North Dakota nor any agency thereof shall be required to pay such fees.

61-04-12. Use of unsafe works - Penalty. Any person using works for the storage, diversion, or carriage of water, at any time after an inspection thereof by the state engineer and receipt of notice from the state engineer that the same are unsafe for the purpose for which they are used, and until the receipt of notice from the state engineer that in the state engineer's opinion they have been made safe, shall be guilty of a class A misdemeanor.

61-04-13. Application of water to beneficial use - Inspection. Repealed by S.L. 1965, ch. 447, § 24.

61-04-14. Extending time for application to beneficial use. The state engineer may extend the time for the application of water to the beneficial use cited in the conditional water permit for good cause shown. When such time has expired, the state engineer may renew and extend the same upon application; provided, however, a conditional water permit, or any portion thereof, shall be considered forfeited, abandoned, and void if no request for renewal is received by the state engineer within sixty days after the date the permittee is informed by certified mail that the period for applying water to the beneficial use cited in the conditional permit has expired. If a request to extend the time for application to beneficial use for any conditional permit, or portion thereof, is denied, such conditional permit, or portion thereof, shall be considered forfeited, abandoned, and void. Sections 61-04-23 through 61-04-25 shall not apply to this section.

61-04-15. Assignment or transfer of conditional or perfected water permit. Any conditional or perfected water permit may be assigned only upon approval by the state engineer. Any conditional or perfected water permit may also be transferred, with the approval of the state engineer, to any parcel of land owned or leased by the holder of such water permit. Upon reasonable proof that such assignment or transfer can be made without detriment to existing rights, the state engineer shall cause the water permit involved to be assigned or simultaneously severed and transferred from such land without losing priority of any right previously established. The decision of the state engineer shall be final unless some party interested in the same source of water supply shall, within sixty days, bring appropriate action in the district court of the county in which the land is located appealing such decision. Applications for assignment and transfer shall be in the form required by regulation. The transfer of title to land in any manner whatsoever shall carry with it all rights to the use of water for irrigation of such land, except that any conditional or perfected water permit for irrigation purposes must be assigned in accordance with this section.

61-04-15.1. Change in point of diversion or use.

1. A permitholder may change the point of diversion or purpose of use without affecting the priority date if approved by the state engineer.
2. The state engineer may approve the proposed change if the state engineer determines that the proposed change will not adversely affect the rights of other appropriators. Applications for a change in the point of diversion or any purpose of use shall be processed and evaluated in the same manner as an application for a water permit.

3. A change in the purpose of use may be authorized only for a superior use as determined by the order of priorities contained in section 61-04-06.1.

61-04-16. Referee or referees appointed in water suits - Duties. Repealed by S.L. 1977, ch. 569, § 27.

61-04-17. Surplus water to be delivered to persons entitled to beneficial use - Charges - Compelling delivery. The owner or owners of any works for the storage, diversion, or carriage of water, which contain water in excess of their needs for beneficial use, shall be required to deliver such surplus, at reasonable rates for storage, or carriage, or both, as the case may be, to the parties entitled to the use of the water for beneficial purposes. In case of the refusal of such owner or owners to deliver any such surplus water at reasonable rates as required by the state engineer, they may be compelled to do so by the district court of the county in which the surplus water is to be used.

61-04-18. Appropriation of water from minor stream for agricultural use. Repealed by S.L. 1963, ch. 419, § 7.

61-04-19. Filing of location certificate - Contents. Repealed by S.L. 1963, ch. 419, § 7.

61-04-20. Approval of state engineer - Rights of claimant - Procedure. Repealed by S.L. 1963, ch. 419, § 7.

61-04-21. Amount of water allowed. Repealed by S.L. 1963, ch. 419, § 7.

61-04-22. Prescriptive water right. A person who used or attempted to appropriate water from any source for beneficial use over a period of twenty years prior to July 1, 1963, is deemed to have acquired a right to the use of the water without having filed or prosecuted an application to acquire a right to the beneficial use of the waters if the user shall have, by December 31, 2001, filed with the state engineer an application for a water permit. If the state engineer finds that the application substantiates the claim and it is approved, it is a perfected water permit with a priority date relating back to the date when the first step was taken to appropriate the water in the quantity stated in the application. The first step may have consisted of survey work, drilling, ditching, damming, diking, or other actual preparation for the appropriation of water provided that the first step was followed by due diligence resulting in the appropriation of water. If the prescriptive user fails to file an application for a water permit with the state engineer by December 31, 2001, the prescriptive water right must be declared abandoned and forfeited. A prescriptive water permit acquired under this section is subject to forfeiture for nonuse as prescribed by sections 61-04-23 through 61-04-25. The state engineer shall publish in each official county newspaper published in this state notice of the deadline for filing for an appropriation permit under this section.

61-04-23. Forfeiture of water rights - Inspection of works. Any appropriation of water must be for a beneficial use, and when the appropriator fails to apply it to the beneficial use cited in the permit or ceases to use it for the beneficial use cited in the permit for three successive years, unless the failure or cessation of use has been due to the unavailability of water, a justifiable inability to complete the works, or other good and sufficient cause, the state engineer may declare the water permit or right forfeited. For purposes of this chapter, an incorporated municipality or rural water system has good and sufficient cause excusing the failure to use a water permit, if the water permit may reasonably be necessary for the future water requirements of the municipality or the rural water system. The state engineer shall, as often as necessary, examine the condition of all works constructed or partially constructed within the state and compile information concerning the condition of every water permit or right and all ditches and other works constructed or partially constructed thereunder.

61-04-24. Forfeiture of water rights - Notice - Contents. If it appears that any water appropriation or portion thereof has not been used for a beneficial use, or having been so used at one time has ceased to be used for that purpose for more than three successive years, unless

the failure or cessation of use is due to the unavailability of water, a justifiable inability to complete the works, or other good and sufficient cause, the state engineer shall set a place and time for a hearing. For purposes of this chapter, an incorporated municipality or a rural water system has good and sufficient cause excusing the failure to use a water permit, if the water permit may reasonably be necessary for the future water requirements of the municipality or the rural water system. Any holder of a water permit using water from a common source of supply, any applicant therefor, or any interested party may request the state engineer to conduct a hearing, the purpose of which is the cancellation of any unused water rights to the common source of supply. Any decision of the state engineer in denying a request for a hearing may be appealed in the manner prescribed by section 61-04-07. Prior to the hearings, the state engineer shall serve notice upon the permitholder and upon the owners of land benefited by the appropriation or works, except where the lands benefited are within the geographical boundaries of a city, in which case notice must be given to the governing body of the city, to show cause by such time and at such place why the water appropriation or a portion thereof should not be declared forfeited and canceled.

In addition to the time and place of hearing, the notice must contain:

1. A description of the water appropriation.
2. The permit number upon the records of the commission.
3. The date of priority.
4. The point of diversion.
5. A description of the lands benefited by the appropriation as indicated on the application for a water permit on file in the office of the commission.
6. Notice that the permitholder, the owners of land benefited by the appropriation or works, and other interested parties whose right to use water may be affected by a cancellation of the appropriation are to show cause why the appropriation, or a portion thereof, should not be canceled.

The notice must be served personally or sent by registered or certified mail at least thirty days before the date of hearing to the permitholder and to the owners of land benefited by the appropriation as indicated on the application for a water permit on file in the office of the commission, or to persons having an interest in works as they appear from the records of the county treasurer or the recorder. In addition, the notice must be published in a newspaper of general circulation in the county in which the point of diversion is located once each week for two consecutive weeks prior to the date of hearing.

61-04-25. Forfeiture of water rights - Hearing - Appeal. At the hearing the verified report of the state engineer or engineers of the state water commission is prima facie evidence for the forfeiture and cancellation of the water permit or portion thereof. If no one appears at the hearing, the water permit or portion thereof must be declared forfeited and canceled. If interested parties appear and contest the cancellation, the state engineer shall hear the evidence and if it appears that the water has not been put to a beneficial use or, having been so used at one time, has ceased to be used for such purpose for more than three successive years, unless the failure or cessation of use is due to the unavailability of water, a justifiable inability to complete the works, or other good and sufficient cause, the same, or a portion thereof, must be declared forfeited and canceled. For purposes of this chapter, an incorporated municipality or a rural water system has good and sufficient cause excusing the failure to use a water permit, if the water permit may reasonably be necessary for the future water requirements of the municipality or the rural water system. An appeal may be taken from the decision of the state engineer in accordance with chapter 28-32.

61-04-26. Recorder to record water permit or order affecting water right. A water permit may be recorded as any other instrument affecting the title to real property without

acknowledgment or further proof. A copy of any order declaring any water right, or portion thereof, forfeited, canceled, or abandoned shall be filed by the state engineer in the office of the recorder in the county or counties where the affected land is located, and it shall be recorded as any other instrument affecting the title to real property without acknowledgment or further proof. Any document filed under this section shall be listed in the index of the property affected as provided in section 11-18-07.

61-04-27. Information filed with state engineer - Installation of measuring devices.

On or before the first day of February of each year all persons holding a water permit, including irrigation districts, federal agencies, and political subdivisions, shall file with the state engineer, on forms supplied by the state engineer, topographic, mapping, foundation test borings, design, water use, and such other information as the state engineer shall require. The state engineer may also require any such persons to install measuring devices, which must conform to the state engineer's specifications, at all points specified by the state engineer.

61-04-28. Correction of application or water right by state engineer. Upon proof satisfactory to the state engineer that an application for a water permit or any water permit contains an error relative to the point of diversion, the legal description of the land to which the water is to be applied, or the quantity of water, the state engineer may, by written notice to the holder of the affected water permit, correct the error without publication of notice.

61-04-29. Enforcement. The state engineer has full power and authority to institute, maintain, and prosecute to determination in an administrative proceeding or any of the courts of this state, or in any of the federal courts, any and all actions, suits, and special proceedings that may be necessary to enjoin unauthorized use of water, to enforce an order of the state engineer or the state water commission, or to otherwise administer the provisions of this chapter. Notwithstanding any other provision of law, the state engineer may issue administrative orders requiring the immediate cessation of water use when the state engineer has a reasonable belief that such use is unauthorized or continued use will damage the rights of prior appropriators.

61-04-30. Penalty. A person who constructs works for an appropriation, or diverts, impounds, withdraws, or uses a significant amount of water from any source without a permit specifically authorizing such action, except as otherwise provided in section 61-04-02; or a person who violates an order of the state engineer; or who fails or refuses to install meters, gauges, or other measuring devices or to control works; or who violates an order establishing corrective controls for an area or for a source of water; or who violates the terms of the permit; or who knowingly makes a false or misleading statement in a declaration of existing rights, is guilty of a class A misdemeanor. As used in this section, "significant amount of water" means any amount of water in excess of that allowed in a valid water permit, or any amount of water in excess of the needs for domestic and livestock purposes where no permit has been issued.

61-04-31. Reservation of waters - Public hearing - Notice.

1. Whenever it appears necessary to the state engineer, or when so directed by the commission, the state engineer may by regulation:
 - a. Reserve and set aside waters for beneficial utilization in the future; and
 - b. When sufficient information and data are lacking to allow for the making of sound decisions, withdraw various waters of the state from additional appropriations until such data and information are available.
2. Prior to the adoption of a regulation under this section, the state engineer shall conduct a public hearing in each county in which waters relating to the regulation are located. The public hearing shall be preceded by a notice placed in a newspaper of general circulation published within each of the counties.
3. Regulations adopted hereunder shall be subject to chapter 28-32.

61-04-32. Damages for illegal diminishment of water supply. If a court of competent jurisdiction determines that a water supply has been illegally diminished in quantity or quality and that a valid water right to use that supply has been damaged as a result of the diminishment, damages awarded to the owner of the water right shall be an amount to cover the cost of making such repairs, alterations, or construction that will ensure the delivery to the surface owner of that quality and quantity of water available to the surface owner prior to the diminishment.

CHAPTER 61-04.1 **WEATHER MODIFICATION**

	<u>Page</u>
<u>Section</u>	
61-04.1-01 Extended state ownership of water sovereignty over moisture	61-04.1: 1
61-04.1-02 Declaration of policy and purpose	61-04.1: 1
61-04.1-03 Definitions	61-04.1: 1
61-04.1-03.1 [Repealed]	61-04.1: 2
61-04.1-04 North Dakota atmospheric resource board created –	
Membership	61-04.1: 2
61-04.1-05 Board districts created	61-04.1: 2
61-04.1-06 Direction and supervision by state water commission –	
Independent functions retained by board	61-04.1: 3
61-04.1-07 Board officers - Compensation	61-04.1: 3
61-04.1-08 Powers and duties of board	61-04.1: 3
61-04.1-09 Board to establish research and development program - Hail	
suppression pilot program	61-04.1: 4
61-04.1-10 Biennial report	61-04.1: 4
61-04.1-11 License and permit required	61-04.1: 4
61-04.1-12 Exemptions	61-04.1: 4
61-04.1-13 Operator deemed to be doing business within state –	
Resident agent	61-04.1: 4
61-04.1-14 Issuance of license - Fee	61-04.1: 4
61-04.1-15 Revocation or suspension of license	61-04.1: 5
61-04.1-16 Permit required - Issuance of permit - Fee	61-04.1: 5
61-04.1-17 Hearings	61-04.1: 6
61-04.1-18 Revocation, suspension, or modification of permit	61-04.1: 6
61-04.1-19 Proof of financial responsibility	61-04.1: 7
61-04.1-20 Board may create operating districts - Representation of	
noncontracting counties	61-04.1: 7
61-04.1-21 District operations advisory committees created - Duties	61-04.1: 7
61-04.1-22 Weather modification authority may suspend operations	61-04.1: 7
61-04.1-22.1 Temporary weather modification authority	61-04.1: 7
61-04.1-23 Weather modification authority created by petition	61-04.1: 8
61-04.1-24 Petition contents	61-04.1: 8
61-04.1-25 Commissioners - Compensation - Meetings - Officers	61-04.1: 9
61-04.1-26 Tax may be certified by weather modification authority	61-04.1: 10
61-04.1-27 Creation of weather modification authority and its powers by	
resolution	61-04.1: 10
61-04.1-28 Procedure for abolishment of weather modification authority and	
all its powers by recall initiated petition	61-04.1: 10
61-04.1-29 Creation of weather modification authority by election	61-04.1: 11
61-04.1-30 Abolishment of weather modification authority by election	61-04.1: 11
61-04.1-31 Creation of weather modification authority by vote after	
resolution of county commissioners	61-04.1: 11

61-04.1-32	County budget may be waived for first appropriation – Conditions	61-04.1: 11
61-04.1-33	Bids required - When	61-04.1: 11
61-04.1-34	Performance bond, cash, or negotiable securities required	61-04.1: 12
61-04.1-35	Bid bond, cash, or negotiable securities required	61-04.1: 12
61-04.1-36	State immunity	61-04.1: 12
61-04.1-37	Liability of controller	61-04.1: 12
61-04.1-38	Board may receive and expend funds	61-04.1: 12
61-04.1-39	Payment for weather modification - State to provide funds	61-04.1: 13
61-04.1-40	State water commission - Compensation - Expenses	61-04.1: 13
61-04.1-41	Penalty	61-04.1: 13

CHAPTER 61-04.1 WEATHER MODIFICATION

61-04.1-01. Extended state ownership of water sovereignty over moisture. In order that the state may share to the fullest extent in the benefits already gained through fundamental research and investigation on new and improved means for predicting, influencing, and controlling the weather, for the best interest, general welfare, health, and safety of all the people of the state, and to provide proper safeguards in applying the measures for use in connection therewith in order to protect life and property, it is deemed necessary and hereby declared that the state of North Dakota claims its sovereign right to use the moisture contained in the clouds and atmosphere within the state boundaries. All water derived as a result of weather modification operations shall be considered a part of North Dakota's basic water supply and all statutes, rules, and regulations applying to natural precipitation shall also apply to precipitation resulting from cloud seeding.

61-04.1-02. Declaration of policy and purpose. The legislative assembly finds that weather modification affects the public health, safety, and welfare, and that, properly conducted, weather modification operations can improve water quality and quantity, reduce losses from weather hazards, and provide economic benefits for the people of the state. Therefore, in the public interest, weather modification shall be subject to regulation and control, and research and development shall be encouraged. To minimize possible adverse effects, weather modification operations shall be carried on with proper safeguards, and accurate information shall be recorded concerning such operations and the benefits obtained therefrom by the people of the state.

61-04.1-03. Definitions. As used in this chapter, unless the context otherwise requires:

1. "Board" means the North Dakota atmospheric resource board which, in the exercise of the powers granted under this chapter, has all of the powers of an administrative agency as defined in chapter 28-32.
2. "Controller" refers to any licensee duly authorized in this state to engage in weather modification operations.
3. "Geographical region" means a geographical area with a contiguous boundary that may enclose a portion of any county or counties.
4. "Hail suppression" refers to the activation of any process that will reduce, modify, suppress, eliminate, or soften hail formed in clouds or storms.
5. "Increasing precipitation" refers to the activation of any process that will actually result in greater amounts of moisture reaching the ground in any area from a cloud or cloud system than would have occurred naturally.
6. "Initiating precipitation" refers to the process of causing precipitation from clouds which could not otherwise have occurred naturally or inducing precipitation significantly earlier than would have occurred naturally.
7. "Operation" means the performance of any weather modification activity undertaken for the purpose of producing or attempting to produce any form of modifying effect upon the weather within a limited geographical area or within a limited period of time.
8. "Research and development" means exploration, field experimentation, and extension of investigative findings and theories of a scientific or technical nature into practical application for experimental and demonstration purposes, including the experimental production of models, devices, equipment, materials, and processes.

9. "Weather modification" means and extends to the control, alteration, and amelioration of weather elements including man-caused changes in the natural precipitation process, hail suppression or modification, and alteration of other weather phenomena including clouds, temperature, wind direction, and velocity, and the initiating, increasing, decreasing, and otherwise modifying by artificial methods of precipitation in the form of rain, snow, hail, mist, or fog through cloud seeding, electrification, or by other means to provide immediate practical benefits.
10. "Weather modification authority" means the governing body created by a board of county commissioners under section 61-04.1-22.1, 61-04.1-23, 61-04.1-27, 61-04.1-29, or 61-04.1-31.

61-04.1-03.1. Atmospheric resource board. Repealed by S.L. 1999, ch. 538, § 9.

61-04.1-04. North Dakota atmospheric resource board created - Membership.

There is hereby created a North Dakota atmospheric resource board which shall be a division of the state water commission. The board shall be composed of the director of the state aeronautics commission, a representative of the environmental section of the state department of health, the state engineer, and one additional board member from each of seven districts established by section 61-04.1-05. The governor shall initially appoint one board member for each of the seven districts from a list of three candidates given to the governor by weather modification authorities in each district and:

1. When the term of office of any board member from any district is about to expire.
2. When a vacancy has occurred, or is about to occur, in the term of office of a board member from any district for any reason other than expiration of term of office.

Beginning on July 1, 1983, the term of office for the board shall be arranged so that not less than three nor more than four terms shall expire on the first day of July of each odd-numbered year. Therefore, board members appointed on July 1, 1983, from districts II, IV, and VI shall serve for two-year terms, and board members appointed on July 1, 1983, from districts I, III, V, and VII, shall serve for four-year terms. Thereafter, board members from each district shall serve for a four-year term of office except in the event the governor shall appoint a member for an unexpired term, in which case the member shall serve only for the unexpired portion of the term. In the event any district fails to furnish a list to the governor, or if there are no weather modification authorities under this chapter within a district, then the governor shall appoint a board member of the governor's choice residing within such district.

61-04.1-05. Board districts created. Members of the board shall be appointed from districts containing the following counties:

District I - Burke, Divide, McKenzie, Mountrail, and Williams.

District II - Bottineau, McHenry, McLean, Renville, Sheridan, and Ward.

District III - Benson, Cavalier, Eddy, Foster, Griggs, Nelson, Pierce, Ramsey, Rolette, Steele, Towner, and Wells.

District IV - Cass, Grand Forks, Pembina, Richland, Traill, and Walsh.

District V - Barnes, Dickey, Kidder, LaMoure, Logan, McIntosh, Ransom, Sargent, and Stutsman.

District VI - Burleigh, Emmons, Grant, Mercer, Morton, Oliver, and Sioux.

District VII - Adams, Billings, Bowman, Dunn, Golden Valley, Hettinger, Slope, and Stark.

61-04.1-06. Direction and supervision by state water commission - Independent functions retained by board. The powers, functions, and duties of the board shall be administered under the direction and supervision of the North Dakota state water commission. The board shall retain the quasi-judicial, quasi-legislative, advisory, budgetary, rulemaking, and other functions vested in it, which shall be exercised in accordance with policy and guidelines for weather modification activities as established by the commission.

61-04.1-07. Board officers - Compensation. All members of the board, with the exception of the chairman, are voting members. The board shall elect annually from its membership a chairman, vice chairman, and secretary. A majority of the members constitute a quorum for the purpose of conducting the business of the board. Board members who are not full-time salaried employees of this state are entitled to receive compensation of sixty-two dollars and fifty cents per day and must be reimbursed for their mileage and expenses in the amounts provided by sections 44-08-04 and 54-06-09. All other members of the board must be reimbursed for necessary travel and other expenses incurred in the performance of the business of the board in the amounts provided in sections 44-08-04 and 54-06-09.

61-04.1-08. Powers and duties of board. The board has the following powers and duties:

1. The board shall appoint an executive director to serve at the board's discretion and to perform duties assigned by the board.
2. The board shall authorize the employment of staff the board deems necessary to carry out the provisions of this chapter. The executive director shall hire the staff, subject to the approval of the board.
3. The board shall adopt rules concerning qualifications, procedures, and conditions for issuance, revocation, suspension, and modification of licenses and permits; standards and instructions governing weather modification operations, including monitoring and evaluation, recordkeeping, and reporting, and the board shall establish procedures and forms for this recordkeeping and reporting. The board may adopt all other rules necessary to the administration of this chapter. The provisions of chapter 28-32 apply to this chapter and rules of the board must be published in the North Dakota Administrative Code.
4. The board may contract with any person to carry out weather modification operations and, in connection with regulated weather modification operations in a county or geographical region, shall carry on monitoring and evaluation activities.
5. The board may order any person who is conducting weather modification operations in violation of this chapter or any rules adopted to implement this chapter, to cease and desist from those operations and the order is enforceable in any court of competent jurisdiction within this state.
6. The board may cooperate and contract with any person engaged in activities similar to the work of the board and may make contracts and agreements to carry out programs consistent with the purpose and intent of this chapter. The board may request and accept any grants of funds or services from any person and expend these funds or use these services to carry out this chapter.
7. The board shall monitor the current state of knowledge regarding the magnitude and impacts of possible regional and global climatic changes and shall provide information to other state agencies that may benefit from this knowledge.
8. The board shall administer and enforce the provisions of this chapter and do all things reasonably necessary to effectuate the purposes of this chapter.

9. The board may plan and study a hail suppression pilot program that would provide urban and rural hail suppression operations statewide or to any portion of the state.

61-04.1-09. Board to establish research and development program - Hail suppression pilot program.

1. The board shall establish a program of weather modification research and development in this state. The board shall supervise and coordinate all research and development activities in the state or research and development activities outside of the state participated in or conducted by any state institution or state or county agency.
2. If the board plans and studies a hail suppression pilot program, the board may conduct a planning phase that includes studying the impact on the environment, providing public education, and formulating an operations plan.

61-04.1-10. Biennial report. The board may prepare and transmit a biennial report to the governor in accordance with sections 54-06-03 and 54-06-04. If submitted, the report must describe the research and development activities conducted during the biennium, and the outcome thereof, and other related work and activities.

61-04.1-11. License and permit required. Except as provided in section 61-04.1-12, no person may engage in weather modification activities without both a professional weather modification license issued under section 61-04.1-14 and a weather modification permit issued under section 61-04.1-16. Licenses shall expire on December thirty-first of the year of issuance.

61-04.1-12. Exemptions. The board may provide by rule for exemption of the following activities from the license and permit requirements of section 61-04.1-11:

1. Research and development conducted by the state, political subdivisions of the state, colleges and universities of the state, agencies of the federal government, or bona fide research corporations.
2. Weather modification operations of an emergency nature taken against fire, frost, or fog.

Exempted activities shall be conducted so as not to unduly interfere with weather modification operations conducted under a permit issued in accordance with this chapter.

61-04.1-13. Operator deemed to be doing business within state - Resident agent. A person shall be deemed doing business within this state when engaged in weather modification operations within the boundaries of this state, and shall, if not already qualified to do business within this state under chapter 10-19.1, prior to conducting such operations, file with the secretary of state an authorization designating an agent for the service of process.

61-04.1-14. Issuance of license - Fee. The board shall provide, by rule, the procedure and criteria for the issuance of a license. The board, in accordance with its rules, shall issue a weather modification license to each applicant who:

1. Pays a license fee of fifty dollars.
2. Demonstrates competence to engage in weather modification operations, to the satisfaction of the board.
3. Designates an agent for the service of process pursuant to section 61-04.1-13 or chapter 10-19.1.

Each license issued by the board shall be nontransferable and shall expire on December thirty-first of the year of issuance. A license shall be revocable for cause at any time prior to such

date if, after holding a hearing upon due notice, the board shall determine that cause for revocation exists. License fees collected by the board shall be paid into the general fund in the state treasury.

61-04.1-15. Revocation or suspension of license. The board may suspend or revoke a license for any of the following reasons:

1. Incompetency.
2. Dishonest practice.
3. False or fraudulent representations made in obtaining a license or permit under this chapter.
4. Failure to comply with any provisions of this chapter or any rules adopted by the board pursuant to this chapter.

61-04.1-16. Permit required - Issuance of permit - Fee.

1. A weather modification permit shall be required for each geographical area, as set out in the operational plan required by subdivision b, in which a person intends to conduct weather modification operations. Each permit issued by the board shall expire on December thirty-first of the year of issuance. A person applying for a weather modification operational permit shall file an application with the board, in such form as the board shall prescribe, which application shall be accompanied by an application fee of twenty-five dollars and contain such information as the board, by rule, may require, and in addition, each applicant for a permit shall:
 - a. Furnish proof of financial responsibility as provided by section 61-04.1-19.
 - b. Set forth a complete operational plan for the proposed operation which shall include a specific statement of its nature and object, a map of the proposed operating area which specifies the primary target area for the proposed operation and shows the area that is reasonably expected to be affected by such operation, a statement of the approximate time during which the operation is to be conducted, a list of the materials and methods to be used in conducting the operation, and such other detailed information as may be needed to describe the operation.
2. The board may issue the permit if it determines that:
 - a. The applicant holds a valid weather modification license issued under this chapter.
 - b. The applicant has furnished satisfactory proof of financial responsibility in accordance with section 61-04.1-19.
 - c. The applicant has paid the required application fee.
 - d. The operation:
 - (1) Is reasonably conceived to improve water quantity or quality, reduce loss from weather hazards, provide economic benefits for the people of this state, advance scientific knowledge, or otherwise carry out the purposes of this chapter.
 - (2) Is designed to include adequate safeguards to minimize or avoid possible damage to the public health, safety, welfare, or the environment.

- (3) Will not adversely affect another operation for which a permit has been issued.
- e. The applicant has North Dakota workforce safety and insurance coverage for all employees working in this state.
- f. The applicant has furnished a performance bond as required by section 61-04.1-34.
- g. The applicant has complied with such other requirements for the issuance of permits as may be required by the rules and regulations of the board.
- h. The applicant has furnished a bid bond in accordance with section 61-04.1-35.
- i. The applicant has registered, with the North Dakota aeronautics commission, any aircraft and pilots intended to be used in connection with the operation.

To carry out the objectives and purposes of this chapter, the board may condition and limit permits as to primary target areas, time of the operation, materials, equipment, and methods to be used in conducting the operation, emergency shutdown procedure, emergency assistance, and such other operational requirements as may be established by the board.

- 3. The board shall issue only one permit at a time for operations in any geographical area if two or more operations conducted in such an area according to permit limitations might adversely interfere with one another.
- 4. All permit fees collected by the board shall be paid into the general fund of the state treasury.

61-04.1-17. Hearings. The board shall give public notice, in the official county newspaper or newspapers in the area of the state reasonably expected to be affected by operations conducted under a permit, that it is considering an application for such permit, and, if objection to the issuance of the permit is received by the board within twenty days, the board may hold a public hearing for the purpose of obtaining information from the public concerning the effects of issuing the permit. The board may also hold such hearings upon its own motion.

61-04.1-18. Revocation, suspension, or modification of permit. The board may suspend or revoke a permit if it appears that the permittee no longer has the qualifications necessary for the issuance of an original permit or has violated any provision of this chapter, or any of the rules adopted under it.

The board may revise the conditions and limits of a permit if:

- 1. The permittee is given notice and a reasonable opportunity for a hearing, to be held in accordance with chapter 28-32.
- 2. It appears to the board that a modification of the conditions and limits of a permit is necessary to protect the public's health, safety, welfare, or the environment.

If it appears to the board that an emergency situation exists or is impending which could endanger the public's health, safety, welfare, or the environment, the board may, without prior notice or hearing, immediately modify the conditions or limits of a permit, or order temporary suspension of a permit. The issuance of such an order shall include notice of a hearing to be held within ten days thereafter on the question of permanently modifying the conditions and limits or continuing the suspension of the permit. Failure to comply with an order temporarily suspending an operation or modifying the conditions and limits of a permit shall be grounds for

immediate revocation of the license and permit of the person controlling or engaged in the operation.

61-04.1-19. Proof of financial responsibility. Proof of financial responsibility is made by showing to the satisfaction of the board that the permittee has the ability to respond in damages to liability which might reasonably result from the operation for which the permit is sought. Such proof of financial responsibility may be shown by:

1. Presentation to the board of proof of a prepaid noncancelable insurance policy against such liability, in an amount approved by the board.
2. Filing with the board a corporate surety bond, cash, or negotiable securities in an amount approved by the board.

61-04.1-20. Board may create operating districts - Representation of noncontracting counties. The board may place any county or geographical region for which a person contracts with the state for weather modification operations in any operational district the board determines necessary to best provide that county or geographical region with the benefits of weather modification. In determining the boundaries of an operating district, the board shall consider the patterns of crops within the state, climatic patterns, and the limitations of aircraft and other technical equipment. The board may assign any county that has not created a weather modification authority under this chapter to an operating district solely for the purpose of representation on the operations committee of that district.

61-04.1-21. District operations advisory committees created - Duties.

1. There must be a district operations advisory committee in each operations district created in accordance with section 61-04.1-20. Each committee must be composed of one commissioner of the weather modification authority, if a weather modification authority exists, from each county within the district; a representative of each person contracting for a geographical region assigned to the district; and one member of the board of county commissioners from each county assigned to the district. Each advisory committee, upon majority vote, with the concurrence of the board, shall adopt rules and bylaws necessary to govern that committee's procedures and meetings. Each committee shall evaluate weather modification operations within that committee's district and make recommendations and proposals to the board concerning these operations.
2. The weather modification authority of any county authorized to contract for weather modification operations under this chapter which is not assigned to an operations district shall assume the functions of the district operations committee and may exercise the powers and duties assigned to the operations committees by this chapter and by the rules of the board.

61-04.1-22. Weather modification authority may suspend operations. Other provisions of this chapter notwithstanding, the weather modification authority in any county authorized to contract for weather modification operations under this chapter may suspend the county and state weather modification operation within that county.

61-04.1-22.1. Temporary weather modification authority. The board of county commissioners of any county that has no weather modification authority may create a temporary weather modification authority by setting a time and place for a public hearing, publishing at least ten days before the hearing notice of the hearing in the official newspaper of the county, and after the public hearing, approving establishment of the authority by majority vote. Upon approval, the board of county commissioners shall designate a water resource district to serve as the temporary weather modification authority. The designated district has all the powers granted to a weather modification authority under sections 61-04.1-23 through 61-04.1-32

A temporary weather modification authority created under this section may conduct weather modification operations within the county for up to four years from the date of the creation of the temporary authority. To continue operating beyond the four-year period, the temporary authority must be made permanent in accordance with sections 61-04.1-23 through 61-04.1-32.

61-04.1-23. Weather modification authority created by petition. A weather modification authority shall be created by resolution and five commissioners appointed thereto for ten-year terms of office, by the board of county commissioners. A board of county commissioners shall not adopt a resolution creating an authority until it has received a valid petition signed by at least fifty-one percent of the qualified electors of a county, as determined by the vote cast for the office of governor at the last preceding general election. The board of county commissioners shall appoint five residents of the county as weather modification authority commissioners from those names set forth in the petition and designated by the petitioners to be appointed weather modification authority commissioners. In the event any one of the five candidates named in the petition to be appointed weather modification authority commissioner is unable or refuses for any reason to accept appointment as commissioner, or is disqualified by not meeting residence requirements, as a qualified elector in the county, the board of county commissioners shall name its own appointee for a ten-year term of office in place of any disqualified candidate selected by the petitioners. If any weather modification authority commissioner submits a resignation in writing to the board of county commissioners or becomes unable or disqualified for any reason, after accepting office, the board of county commissioners shall name its appointee as a commissioner to the weather modification authority. All vacancies occurring otherwise than by expiration of term of office shall be filled for the unexpired term.

Any weather modification authority created pursuant to this section shall expire ten years after the date of the initial appointment of the commissioners thereto. Any unexpended funds remaining in the name of the weather modification authority, after all proper bills and expenses have been paid, shall be transferred into the county general fund by the officers of the weather modification authority on or before the ten-year termination date provided by this section. However, all unexpended funds remaining in the name of the weather modification authority, after all proper bills and expenses have been paid, shall remain in the name of the weather modification authority if the board of county commissioners of such county by resolution creates a weather modification authority and all its powers in accordance with section 61-04.1-27.

Nothing in this section shall prevent continuation or reinstatement of a weather modification authority, provided the authority is renewed for another ten years by petition of the qualified electors in the same manner as the initial weather modification authority was created by petition of qualified electors as provided for in this chapter.

In the event more than one petition is filed with the board of county commissioners on or about the same time, the petition with the highest percentage of the qualified electors of the county voting for the office of governor at the last preceding general election shall be selected by the board of county commissioners. However, the petition with the highest percentage must have the signatures of at least forty percent of the qualified electors in the county and the sum total of all qualified electors signing all petitions filed must equal at least sixty percent of the qualified electors in the county. In no case shall the name of the same qualified elector appear on two or more petitions, but in such event, the name shall be stricken from both petitions.

61-04.1-24. Petition contents. The petition for the creation of a weather modification authority and for appointment of commissioners shall contain:

1. A title with the heading: "Petition for Creation of (insert name of county) Weather Modification Authority".
2. The following paragraph: We, the undersigned qualified electors of (name of county), state of North Dakota, by this initiated petition request that the (name of county) board of county commissioners of said county create by resolution a (name of county) weather modification authority and appoint the following five qualified

electors of the county to a ten-year term of office as commissioners for the (name of county) weather modification authority:

(Here insert the name and address of each proposed commissioner for the (name of county) weather modification authority.)

3. The following paragraph: We, the undersigned qualified electors of the (name of county), state of North Dakota, are notified hereby that the creation of the (name of county) weather modification authority and the appointment of its commissioners by the (name of county) board of county commissioners will grant unto the authority by law the power to certify to the board of county commissioners a mill levy tax not to exceed seven mills upon the taxable valuation of property in said county for a weather modification fund, which tax may be levied in excess of the mill levy limit fixed by law for taxes for general county purposes and that such fund shall be used for weather modification activities in conjunction with the state of North Dakota. We, the undersigned, understand that the authority requested in this petition expires ten years after the creation of the weather modification authority, except that the board of county commissioners may by resolution create a weather modification authority and all its powers, including the power to certify a tax levy as provided by section 61-04.1-26, for five-year periods in accordance with section 61-04.1-27.
4. A heading: "Committee for Petitioners", followed by this statement: The following qualified electors of (name of county), state of North Dakota, are authorized to represent and act for us, and shall constitute the "Committee for the Petitioners" in the matter of this petition and all acts subsequent thereto.
5. Petition details: All signatures to such petition shall be numbered and dated by month, day, and year. The name shall be written with residence address and post-office address including the county of residence followed by state of North Dakota.
6. An affidavit to be attached to each petition and sworn to under oath before a notary public by the person circulating each petition attesting to the fact that the person circulated the petition and that each of the signatures to said petition is the genuine signature of the person whose name it purports to be, and that each such person is a qualified elector in the county in which the petition was circulated.
7. The petition must state the mills to be levied by the county for the purposes of this chapter.

61-04.1-25. Commissioners - Compensation - Meetings - Officers. A commissioner of a weather modification authority shall receive no compensation for services, but shall be entitled to the necessary expense, as defined in section 44-08-04, incurred in the discharge of the commissioner's duties. Each commissioner shall hold office until a successor has been appointed and has qualified. The certificates of appointment shall be filed with the weather modification authority.

The powers of each weather modification authority shall be vested in the commissioners thereof. A majority of the commissioners of an authority shall constitute a quorum for the purpose of conducting the business of the authority and exercising its powers and for all other purposes. A majority of the commissioners shall constitute a quorum, but action may not be taken by the authority except by an affirmative vote of not less than a majority of all the commissioners.

A chairman, vice chairman, and treasurer shall be elected from among the commissioners. A weather modification authority may employ an executive director, secretary, technical experts, and such other officers, agents, and employees, permanent and temporary, as it may require, and shall determine their qualifications, duties, and compensation. For such legal services as it may require, an authority may call upon the state's attorney of the county. An

authority may delegate to one or more of its agents or employees such powers or duties as it may deem proper.

Minutes shall be kept by the secretary of official meetings and shall include all official business such as contracts authorized and all authorizations for payment of weather modification authority funds to persons, organizations, companies, corporations, and limited liability companies. All disbursements shall be approved by a majority of all the commissioners of an authority. Disbursements authorized by the authority for the payment of employee salaries, bills, contracts, services, fees, expenses, and all other obligations shall be made by check signed by the chairman and the treasurer of the authority. Official policies shall also be entered into the minutes. An annual report shall be compiled with complete disclosure of funds expended for contracts, services, fees, salaries, and all other reimbursements, a copy of which shall be filed with the county auditor. The annual report shall be presented at a public meeting called for such purpose.

61-04.1-26. Tax may be certified by weather modification authority. The weather modification authority may certify annually to the board of county commissioners a tax of not to exceed seven mills upon the taxable valuation of the property in the county for a "weather modification" fund. If weather modification services are not provided to the entire county, the weather modification authority may certify annually to the board of county commissioners a tax for a weather modification fund of not to exceed seven mills upon the taxable valuation of the property in the county designated to receive weather modification services. The tax shall be levied by the board of county commissioners and may be levied in excess of the mill levy limit fixed by law for taxes for general county purposes. The weather modification fund shall be used only for weather modification activities in conjunction with the state of North Dakota. The tax certified by the weather modification authority is limited to the period of existence of the weather modification authority as provided for in this chapter.

61-04.1-27. Creation of weather modification authority and its powers by resolution. When a weather modification authority is about to expire, the board of county commissioners of any such county may by resolution authorize the creation of such weather modification authority and all its powers, including the power to certify a tax levy as provided by section 61-04.1-26, for additional five-year periods; provided, the resolution authorizing the creation of such weather modification authority is adopted by the board of county commissioners before the expiration date prescribed in the preceding resolution for its termination. Upon passing such resolution for the creation of the authority, the board of county commissioners shall appoint five weather modification authority commissioners to five-year terms of office, subsequently filling vacancies in the manner prescribed by section 61-04.1-23. The board of county commissioners may remove any weather modification commissioner from office whenever it appears, by competent evidence and after hearing, that the commissioner has been guilty of misconduct, malfeasance, crime in office, neglect of duty in office, or of habitual drunkenness or gross incompetency.

61-04.1-28. Procedure for abolishment of weather modification authority and all its powers by recall initiated petition. After fifty-one percent of the qualified electors of a county, as determined by the vote cast for the office of governor at the last preceding gubernatorial election, shall petition the board of county commissioners of their county to recall the commissioners of a weather modification authority as created by section 61-04.1-23 and to abolish the county weather modification authority, the board of county commissioners shall adopt a resolution recalling all commissioners of such weather modification authority and abolishing their appointed office and the weather modification authority, until such time as a weather modification authority is created by petition in accordance with section 61-04.1-23. Before adopting such a resolution, the county commissioners must find that the petition meets the requirements as to the number of qualified electors as required in this chapter. If the board of county commissioners adopts a resolution recalling all commissioners of a weather modification authority and abolishing the authority, all unexpended funds remaining in the name of the authority, after all proper bills and expenses have been paid, shall be transferred to the county general fund by the weather modification authority commissioners on the effective date of the resolution. In the event there are outstanding valid bills unpaid after that date, the board of

county commissioners is hereby authorized to pay such obligations from moneys in the county general fund. A recall petition shall have a title with the heading: "Recall Petition for the Abolishment of (insert name of county) Weather Modification Authority". The recall petition shall incorporate a paragraph stating its purpose in clear language and shall comply with all requirements prescribed in subsections 4, 5, and 6 of section 61-04.1-24, relating to petition contents, committee for petitioners, petition details, affidavits, and persons circulating such petitions.

61-04.1-29. Creation of weather modification authority by election. When a petition signed by not less than twenty percent of the qualified electors of the county, as determined by the vote cast for the office of governor at the last preceding gubernatorial election, requesting an election upon the establishment of a weather modification authority is presented to the board of county commissioners, not later than forty-five days prior to the next countywide election, the board of county commissioners shall submit the question to the qualified electors of the county at the next countywide election. Upon approval by a majority of the votes cast on the question, the board of county commissioners shall, by resolution, establish a weather modification authority as described in section 61-04.1-23 with all powers set out in this chapter, including the power to certify a tax levy as provided by section 61-04.1-26.

61-04.1-30. Abolishment of weather modification authority by election. When a petition signed by not less than twenty percent of the qualified electors of the county, as determined by the vote cast for governor in the last preceding gubernatorial election, requesting an election upon the abolishment of a weather modification authority as created in sections 61-04.1-27 and 61-04.1-29 is presented to the board of county commissioners, not later than forty-five days prior to the next countywide election, the board of county commissioners shall submit the question to the qualified electors of the county at the next countywide election. Upon approval by a majority of the votes cast on the question, the board of county commissioners shall abolish the weather modification authority as of December thirty-first following the election. All unexpended funds remaining in the name of the weather modification authority, after all proper bills and expenses have been paid, shall be deposited in the general fund of the county.

61-04.1-31. Creation of weather modification authority by vote after resolution of county commissioners. The board of county commissioners of any county may, by resolution after a public hearing, submit the question of the creation of a weather modification authority to the electors of the county at the next countywide election. Upon approval by a majority of the votes cast on the question, the board of county commissioners shall pass a resolution creating a weather modification authority, as described in section 61-04.1-23. Such an authority shall have all powers provided by this chapter, including the authority to levy a tax as provided by section 61-04.1-26.

61-04.1-32. County budget may be waived for first appropriation - Conditions. The provisions of chapter 11-23 shall not apply to appropriations made under the provisions of this chapter. However, immediately after a weather modification authority has been created by resolution of the board of county commissioners, and after certification of a mill levy by the weather modification authority, and only for the initial or first appropriation for the authority, the county commissioners may, at their discretion, appropriate from moneys, not otherwise appropriated, in the general fund, such moneys as are necessary for carrying out the provisions of this chapter. However, the appropriation shall not exceed an amount equal to what funds would be raised by a seven-mill levy upon the taxable valuation of the property in the county.

61-04.1-33. Bids required - When. Whenever the board shall undertake to contract with any licensed controller in an amount in excess of ten thousand dollars in any one year, the board shall advertise for proposals for such weather modification activities and, in its proceedings with respect to bids therefor, shall substantially follow the manner and form required by the laws of this state for the purchase of supplies by the office of management and budget. The board shall enter into no contract or agreement for weather modification services except with a controller, holding the permit as required by this chapter, except for the purpose of gathering technical information, and making studies or surveys.

61-04.1-34. Performance bond, cash, or negotiable securities required. Before the board shall contract with any controller, it shall require the controller to furnish a surety bond or cash or negotiable securities for the faithful performance of the contract in such amount as determined by the board, conditioned that the licensee and the licensee's agents will in all respects faithfully perform all weather modification contracts undertaken with the board and will comply with all provisions of this chapter and the contract entered into by the board and the licensee.

61-04.1-35. Bid bond, cash, or negotiable securities required. All bids submitted to the board for operations conducted under this chapter shall be accompanied by a separate envelope containing a bidder's bond or cash or negotiable securities in a sum equal to five percent of the full amount of the bid, executed by the bidder as principal or by a surety company authorized to do business in this state as a guarantee that the bidder will enter into the contract if it is awarded to the bidder.

61-04.1-36. State immunity. Nothing in this chapter shall be construed to impose or accept any liability or responsibility on the part of this state or any of its agencies, or any state officials or state employees or weather modification authorities for any injury caused by weather modification operations by any person or licensed controller as defined in this chapter.

61-04.1-37. Liability of controller.

1. An operation conducted under the license and permit requirements of this chapter is not an ultrahazardous or abnormally dangerous activity which makes the permittee subject to liability without fault.
2. Dissemination of materials and substances into the atmosphere by a permittee acting within the conditions and limits of the permittee's permit shall not constitute trespass.
3. Except as provided in this section and in section 61-04.1-36, nothing in this chapter shall prevent any person adversely affected by a weather modification operation from recovering damages resulting from negligent or intentionally harmful conduct by a permittee.
4. The fact that a person holds a license or was issued a permit under this chapter, or that the person has complied with the rules adopted by the board pursuant to this chapter, is not admissible as a defense in any legal action which may be brought against the person.

61-04.1-38. Board may receive and expend funds. The board may receive and accept in the name of the state any funds that are offered or become available from any federal grant or appropriation, private gift, donation, or bequest, county funds, or funds from any other source except license and permit fees, and to expend these funds for the expense of administering this chapter, and, with the exception of county funds and funds from any other person contracting with the board for weather modification operations, for the encouragement of research and development in weather modification by any private person, the North Dakota state university, the university of North Dakota, or any other appropriate state, county, or public agency in this state by direct grant, contract, or other means.

All federal grants, federal appropriations, private gifts, donations, or bequests, county funds, or funds from any other source except license and permit fees, received by the board must be paid over to the state treasurer, who shall credit this amount to a special fund in the state treasury known as the state weather modification fund. All proceeds deposited by the state treasurer in the state weather modification fund are hereby appropriated to the board and, if expended, must be disbursed by warrant-check prepared by the office of management and budget upon vouchers submitted by the board and must be used for the purpose of paying for the expense of administration of this chapter and, with the exception of county funds or funds from any other person contracting with the board for weather modification operations, for the

encouragement of research and development in weather modification by any private person, the North Dakota state university, the university of North Dakota, or any other appropriate state, county, or public agency by direct grant, contract, or other means.

61-04.1-39. Payment for weather modification - State to provide funds. Any weather modification authority or person that contracted with the board for weather modification operations under this chapter shall appropriate to the state weather modification fund the amount determined by the board to be necessary to provide that weather modification authority or person with weather modification operations. The board may expend, from the state weather modification fund, the funds the board deems necessary to provide a contracting weather modification authority or person with weather modification operations.

61-04.1-40. State water commission - Compensation - Expenses. Each member of the North Dakota state water commission shall receive the same compensation paid for other commission duties, for each day actually and necessarily engaged in the performance of official duties in connection with the administration of this chapter. Commission members and employees shall be reimbursed for actual and necessary expenses incurred in carrying out their official duties in the same manner and at the same rates as provided by law for state employees.

61-04.1-41. Penalty. Any person contracting for or conducting any weather modification activity without being licensed in accordance with the provisions of this chapter, or otherwise violating the provisions of this chapter, shall be guilty of a class B misdemeanor.

CHAPTER 61-05 ORGANIZATION OF IRRIGATION DISTRICTS

<u>Section</u>	<u>Page</u>
61-05-01 Definitions	61-05: 1
61-05-02 Proposals for irrigation district - Electors required	61-05: 1
61-05-03 Votes of electors - Number permissible	61-05: 1
61-05-04 Fiduciary must file proof of authority - Appointment of agent	61-05: 2
61-05-05 Coowners of land in irrigation district - Who may vote	61-05: 2
61-05-06 Private or public corporation or limited liability company may designate agent to vote	61-05: 2
61-05-07 Petition for a proposed irrigation district - Where filed - Signed by whom - Contents	61-05: 2
61-05-08 Petition accompanied by map - Contents - Scale	61-05: 2
61-05-09 Petition accompanied by bond - Approval of bond - Certified copy of petition filed	61-05: 3
61-05-10 Hearing on petition - Notice - Report prepared by state engineer on feasibility - Copy of report filed - Submitted to electors	61-05: 3
61-05-11 Amendment of plan of irrigation - Adjournment of hearing by state engineer	61-05: 3
61-05-12 State engineer may make order denying petition - Filing	61-05: 3
61-05-13 State engineer to make order establishing irrigation district - Calling election - Dividing district - Contents of order	61-05: 3
61-05-14 Notice of election by state engineer - Contents - Publication	61-05: 4
61-05-15 Form of notice of election	61-05: 4
61-05-16 State engineer to appoint clerk and two judges of election - Filling vacancies on board	61-05: 5
61-05-17 Conduct of election - Votes canvassed by board and state engineer - Retaining ballots	61-05: 5
61-05-18 Election governing organization of district - Filing record of election - Certificates of election to directors	61-05: 5
61-05-19 State engineer to file order with secretary of state - Secretary of state to make certificate - Evidence	61-05: 5
61-05-20 Appeal to <i>district court</i> from orders and decisions of the state engineer - Time - Undertaking	61-05: 5
61-05-21 Validating organization and acts of irrigation districts	61-05: 6

CHAPTER 61-05

ORGANIZATION OF IRRIGATION DISTRICTS

61-05-01. Definitions. As used in this chapter and in succeeding chapters dealing with irrigation districts:

1. "Board" means the board of directors of any irrigation district.
2. "Elector" means any landowner owning not less than five acres [2.02 hectares] of land whose land will be or is subject to assessments for construction or other costs, within a proposed or existing irrigation district, and who is a resident of this state. As herein used the term "owner" means an owner in fee simple and also includes:
 - a. An entryman of government land.
 - b. A purchaser of land under contract.
 - c. A guardian, executor, administrator, or trustee.
 - d. A corporation organized and existing under the laws of this state.
 - e. A limited liability company organized and existing under the laws of this state.
 - f. The United States of America and the state of North Dakota.
3. "Irrigable acres" or "irrigable lands" means those lands which can or will be served by the district's works, as determined by the state engineer before the district is organized, or as determined from time to time by the district's board of directors. Whenever land or acreage is described as being "susceptible of irrigation" or "subject to assessment", it means the same as irrigable acres.
4. "Works" includes canals, ditches, pipelines, and other conveyance systems, pumping plants, rights of way, easements, reservoirs, dams, well fields, and other works for the appropriation of water and the necessary sites for pumping plants, reservoirs, dams, well fields, and all means and property required for a completed operating system of irrigation works.

61-05-02. Proposals for irrigation district - Electors required. Whenever a majority of the electors within an area containing eighty acres [32.37 hectares] or more of land, susceptible of irrigation, desire to provide for the irrigation of such land, they may propose the organization of an irrigation district under the provisions of this chapter. When so organized, the district shall have the powers conferred or that may be conferred by law upon irrigation districts. No district, when so organized, shall contain less than five electors, as the term elector is defined in this chapter. Where irrigation works, ditches, or canals have been constructed prior to July 1, 1941, of sufficient capacity to irrigate the lands thereunder for which the water taken in such canals or ditches is appropriated, such canals or ditches and the franchises under which the same are maintained and operated, and the lands irrigated by such canals or ditches, shall be exempt from the operation of the provisions of this chapter, unless such irrigation district is created to acquire and own such irrigation works, canals, ditches, water rights, and franchises.

61-05-03. Votes of electors - Number permissible. Any elector owning twenty acres [8.09 hectares] or less but not less than five acres [2.02 hectares], subject to assessments for construction or other costs within a proposed or existing district, shall have one vote. Any elector owning more than twenty acres [8.09 hectares] subject to such assessments within any irrigation district which will receive all or a portion of its water supply from a federal reclamation or irrigation project shall have one additional vote for each additional twenty acres [8.09 hectares] or major fraction thereof. However, the total votes any elector is entitled to must be determined based on the number of acres [hectares] the elector is entitled to irrigate pursuant to the Reclamation

Reform Act of 1982 [Pub. L. 97-293; 96 Stat. 1263; 43 U.S.C. 390aa et seq.] and may not exceed more than thirty-five percent of the total votes eligible to be cast in any district election regardless of the number of acres [hectares] of land owned by the elector in the district. Any elector owning more than twenty acres [8.09 hectares] subject to assessments within any existing or proposed irrigation district which does not receive any of its water supply from a federal reclamation or irrigation project shall have one additional vote for each additional twenty acres [8.09 hectares] or major fraction thereof, but no elector shall be entitled to cast more than thirty-five percent of the total votes eligible to be cast in any district election regardless of the number of acres [hectares] of land owned by the elector in the district.

61-05-04. Fiduciary must file proof of authority - Appointment of agent. A guardian, executor, administrator, or trustee shall present to and file with the clerk of the irrigation district election board a certified copy of the person's or corporation's letters of guardianship, letters testamentary, or letters of administration, or of the instrument creating the trust, as the case may be. Any such guardian, executor, administrator, or trustee, whether an individual or a corporation, by an instrument in writing, duly acknowledged, may designate an agent to vote in the person's or corporation's behalf. Such instrument appointing such agent shall be presented to and filed with the clerk of the district election board by such agent.

61-05-05. Coowners of land in irrigation district - Who may vote. Where lands within a proposed or existing irrigation district are owned by coowners only, such coowners who are residents of this state may vote their respective interest personally, or such coowners by an instrument in writing, may designate one of their number as agent to cast the vote for each such coowner. Provided, that in no event shall any such coowner be entitled to cast, less than one full vote, or any vote or votes constituting any fraction of one vote. Such instrument shall be acknowledged by such coowners and shall be presented to and filed with the clerk of the district election board.

61-05-06. Private or public corporation or limited liability company may designate agent to vote. Where lands which are within a proposed or existing irrigation district are owned by a corporation or a limited liability company, by the United States, or by this state, such corporation or limited liability company, and any department or agency of the United States or of this state, in order to participate in any district election, by an instrument in writing, executed and acknowledged by the proper officer or officers of such corporation, department, or agency, or by the proper manager or managers of such limited liability company, shall designate an agent to vote in its behalf. Such instrument shall be presented to and filed with the clerk of the district election board by such agent.

61-05-07. Petition for a proposed irrigation district - Where filed - Signed by whom - Contents. A petition for a proposed irrigation district shall be filed with the state engineer and shall be signed by landowners of the proposed district who together shall own a majority of the whole number of acres [hectares] subject to assessment for construction or other costs within the district requesting the territory described in such petition be organized under the provisions of this chapter. Such territory shall be described and shall be included in such district, if established, by legal governmental subdivisions of forty acres [16.19 hectares] or more unless held in fractional lots or plotted units of lesser size, or unless portions thereof are more readily susceptible to irrigation from works other than those of the proposed district. The proposed district may include lands which are not contiguous to any other lands in the proposed district. Such petition shall set forth the name and address of each petitioner and a description of the petitioner's land, and the petition shall have attached thereto a map or maps showing the boundaries of the proposed district.

61-05-08. Petition accompanied by map - Contents - Scale. The petition provided for in section 61-05-07 shall be accompanied by a map or maps of the proposed district. The map shall show the location of the proposed conveyance systems and other works by means of which it is intended to irrigate the lands of the proposed district. If the water supply is from a natural stream, the flow of such stream shall be stated in cubic feet [meters] per second. If the water supply for the district is to be gathered by a storage reservoir or reservoirs, the map shall show the location thereof and shall state their capacity in acre-feet. If the water supply is from a

ground water source, the map must show the general location of wells and proposed pumping rates. Unless otherwise permitted by the state engineer, such map shall be drawn to a scale of not less than two inches [5.08 centimeters] to the mile [1.61 kilometers]. Preliminary designs of all proposed conveyance systems and other works shall be prepared in sufficient detail to show the contemplated method of construction, along with a feasibility report on the proposed plan of irrigation. The feasibility report must include an analysis of the soil and water compatibility of the irrigable lands of the proposed district. A registered professional engineer shall prepare the map, preliminary designs, and feasibility report required by this section.

61-05-09. Petition accompanied by bond - Approval of bond - Certified copy of petition filed. Unless otherwise permitted by the state engineer, the petition shall be accompanied by a good and sufficient bond to be approved by the state engineer, which shall be in double the amount of the probable cost of organizing such district, including the cost of the first election for the organization of the district and shall be conditioned that the sureties will pay all costs in case said organization shall not be approved by the electors. Within ten days after the filing of such petition, and the approval of such bond, the state engineer shall file a copy of such petition with the county auditor of each county wherein the proposed irrigation district is situated.

61-05-10. Hearing on petition - Notice - Report prepared by state engineer on feasibility - Copy of report filed - Submitted to electors. The state engineer shall examine the petition, maps, papers, and data pertaining to the proposed irrigation district and shall fix a time and place for hearing such petition. A notice stating that such petition will be heard, and stating the time and place of hearing, shall be filed with the county auditor of each county wherein such proposed district is located. The notice shall be published once each week for two consecutive weeks in the newspaper or newspapers of general circulation where the district is located and in the official newspaper of each county in which the district is located. The date set for the hearing on the petition may not be less than twenty days after the first publication of the notice. Prior to such hearing the state engineer shall review the maps, preliminary designs, and feasibility study and shall prepare, or shall cause to be prepared, a summary report showing the probable cost of the proposed irrigation works and the practicability and feasibility of the plan of irrigation suggested or proposed by petitioners for the irrigation of the lands within such district. A copy of such report shall be filed with the county auditor of each county wherein the proposed irrigation district is situated and such report shall be open to public inspection. The state engineer also shall submit such report to the electors of the proposed district at the meeting set for hearing the petition for the organization thereof.

61-05-11. Amendment of plan of irrigation - Adjournment of hearing by state engineer. At the hearing provided in section 61-05-10, the state engineer may amend the plan of irrigation proposed in the petition provided in section 61-05-07. The state engineer may adjourn such hearing from time to time and may make such changes in the proposed boundaries of the district as the state engineer shall deem advantageous and advisable, but the boundaries of the district proposed in the petition for its organization shall not be enlarged or extended until the electors who own a majority of the acres [hectares] of land subject to assessments for construction or other costs to be included in the extension having in writing consented thereto.

61-05-12. State engineer may make order denying petition - Filing. If the state engineer shall determine that the plan of irrigation proposed is not practicable or that such plan is not economically sound, the state engineer shall make an order denying the petition for the organization of an irrigation district and shall state the reasons for the action. A copy of such order shall be filed with the county auditor of each county in which the proposed irrigation district is situated.

61-05-13. State engineer to make order establishing irrigation district - Calling election - Dividing district - Contents of order. If the state engineer finds and determines that the establishment of the proposed irrigation district is advisable, and that the plan proposed for irrigating the lands therein is practicable and economically sound, the state engineer shall make an order establishing the irrigation district, subject to the approval of the electors of the district at an election called by the state engineer for that purpose. If the district embraces more than twenty thousand irrigable acres [8093.72 irrigable hectares] of land, the state engineer by the

order shall divide the district into five or seven divisions or precincts as the state engineer determines necessary for the convenience of the electors of the district. The divisions or precincts must be as nearly equal in size as may be deemed practicable, the divisions must be numbered, and one director must be elected from, and by the electors of, each division. If an elector owns land in more than one division, the elector must cast all the elector's votes for director and be eligible for election as a director in the division in which the majority of the elector's land subject to assessment lies. The order must set forth:

1. The time and place of holding the election.
2. The boundaries of the district.
3. That a petition sufficient in form and substance was filed with the state engineer.
4. That due and reasonable notice of time and place of hearing on petition was given to the qualified electors of the proposed irrigation district.

A copy of the order must be filed with the county auditor of each county in which the irrigation district is situated. The order is prima facie evidence of the matter and facts therein stated.

61-05-14. Notice of election by state engineer - Contents - Publication. Upon making an order establishing an irrigation district, the state engineer shall give notice of an election to be held in such district for the purpose of determining whether or not the electors of the district approve the establishment and organization thereof as an irrigation district. The notice shall state that an elector desiring to be a candidate for the office of district director shall file the elector's name with the state engineer not less than twenty days before such election. The notice shall carry a reference to the map or maps previously filed with the county auditor describing the boundaries of the lands included in the district as established by the state engineer and shall designate a name for such district. The notice shall be filed with the county auditor of each county in which the proposed district is situated and shall be published once each week for two consecutive weeks in the newspaper or newspapers of general circulation where the district is located and in the official newspaper of each county in which the district is located. The date set for the election shall be not less than twenty-five, nor more than thirty-five, days after the first publication of the notice.

61-05-15. Form of notice of election. The notice of election provided for in section 61-05-14 must be substantially in the following form:

NOTICE OF ELECTION

Notice is given that on _____, _____, an election will be held for the purpose of submitting to the electors within the territory established and described by the order of the state engineer as _____ irrigation district, the question as to whether the order of the state engineer establishing the irrigation district is approved. Notice is given that the lands of the district are fully described in the order of the state engineer establishing the district and filed in the state engineer's office in Bismarck, North Dakota, and in the office of the county auditor of _____ County, North Dakota. The ballot must be in the following form:

FOR IRRIGATION DISTRICT

Yes ☐
No ☐

Notice is further given that a board consisting of _____ directors will be elected, one from each district division, who will serve as provided by law after the establishment of the district is approved. Polls will be open from one p.m. to seven p.m. Notice is further given that any elector desiring to be a candidate for the office of district director and have the elector's name appear on the ballot must file the elector's request in writing with the state engineer not less than twenty days before the election.

Dated _____, _____.

Signed _____

61-05-16. State engineer to appoint clerk and two judges of election - Filling vacancies on board. Prior to the holding of an election upon the question of establishing and organizing an irrigation district, the state engineer shall appoint from the electors of the district one clerk and two judges who shall constitute a board of election for such district. If the district is divided into divisions or precincts, such board of election shall be appointed from the electors of each such division and shall serve as a board of election therein. If the members appointed do not attend at the opening of the polls on the day of election, the electors present at that hour may choose the members of the election board or fill the place of an absent member thereof.

61-05-17. Conduct of election - Votes canvassed by board and state engineer - Retaining ballots. An election upon the question of organizing an irrigation district shall be conducted in accordance with the general election laws of the state. After the polls are closed, the election board shall proceed to canvass the votes cast thereat, and the clerk of the election board shall certify to the state engineer the result of such election. The clerk of the board then shall wrap securely the ballots cast at such election and shall express or mail the same by registered or certified mail to the state engineer who also shall canvass the ballots and verify the result. The state engineer shall file and retain in the state engineer's office the ballots cast at such election.

61-05-18. Election governing organization of district - Filing record of election - Certificates of election to directors. If, upon a canvass of the votes cast and after such canvass has been verified by the state engineer it appears that a majority of all votes cast are in favor of the organization of an irrigation district, the state engineer, by an order, shall declare such territory duly organized as an irrigation district under the name and style designated and shall declare the persons receiving the highest number of votes duly elected as directors. The state engineer shall cause a copy of such order, duly certified, to be filed immediately for record in the office of the recorder of each county in which any portion of the irrigation district is situated and also shall file a copy of such order with the county auditor of each such county, and from and after the date of such filing, the organization of such district shall be complete. The state engineer immediately shall make out and mail, by registered or certified mail, to each person elected to the office of director a certificate of election signed by the state engineer. The directors thereupon shall enter upon the duties of their office.

61-05-19. State engineer to file order with secretary of state - Secretary of state to make certificate - Evidence. The state engineer shall file in the office of the secretary of state a copy, duly certified by the state engineer, of the state engineer's order declaring any territory to be duly organized as an irrigation district, and the secretary of state shall make and issue to the state engineer a certificate under the seal of the state, of the due organization of such district and shall file a copy of such certificate and the said order of the state engineer. Such certificate of the secretary of state, or a copy thereof, authenticated by the secretary of state, shall be *prima facie* evidence of the organization and existence of such irrigation district.

61-05-20. Appeal to district court from orders and decisions of the state engineer - Time - Undertaking. An appeal may be taken to the district court from any order or decision of the state engineer by any person who is aggrieved thereby, at any time within thirty days after the order or decision appealed from has been filed with the county auditor of the county in which the appeal is taken. Such appeal shall be taken by serving notice of appeal on the state engineer and by filing the notice of appeal, proof of service thereof, and the undertaking required in this section with the clerk of the district court of the county in which the appeal is taken. To effect an appeal an undertaking must be executed by the appellant and sufficient surety conditioned that the appellant will prosecute such appeal without delay and will pay all costs adjudged against the appellant in the district court. Such undertaking shall be made in favor of the state engineer as obligee and may be enforced by the state engineer. The appeal shall be taken to the district court of the county in which the land claimed to be affected adversely by the order or decision appealed from is situated, and if such land is situated in more than one county such appeal may be taken to the district court of any county in which any part of such land is situated. Any appeal thus taken shall be docketed in the district court as any civil cause commenced in the district

court is docketed and thereupon the district court shall have and exercise original jurisdiction in such cause, and shall hear and determine the same, without a jury, in like manner as a civil cause originally commenced in that court. The court may require the service and filing of formal pleadings and fix the time therefor. Appeals to the supreme court may be taken by the state engineer or any other party to the cause from any judgment entered in the district court in any such cause, and from any order of said court if an appeal would lie from such an order if the same were entered by the court in any other civil action.

61-05-21. Validating organization and acts of irrigation districts. Nothing contained in this chapter shall be construed as impairing, invalidating, or in any manner affecting the validity of acts or proceedings of irrigation districts organized pursuant to the provisions of chapter 38 of the Code of Civil Procedure of the Supplement to the Compiled Laws of 1913 and prior to March 16, 1939. The organization of any irrigation district prior to March 16, 1939, in substantial compliance with the provisions of this chapter, hereby is declared to be a valid and legal district, and all acts and proceedings of such district, and of the board of directors thereof, done and performed in substantial compliance with the provisions of this title hereby are validated and hereby are declared legal and valid.

CHAPTER 61-06 **GOVERNMENT OF IRRIGATION DISTRICTS**

	<u>Page</u>
<u>Section</u>	
61-06-01 Board of directors of irrigation district - Terms - Vacancies	61-06: 1
61-06-02 Directors elected subsequent to organization assume office -	
Time - Term	61-06: 1
61-06-03 Oath and bond of boards of directors - Filing	61-06: 1
61-06-04 Meeting of directors - Organization - Officers - Quorum - Term	
of officers	61-06: 1
61-06-05 Official bonds of assessor, district treasurer, and other	
employees - Approval and filing of bonds	61-06: 2
61-06-06 District organized under provisions of chapter appointed fiscal	
agent of the United States	61-06: 2
61-06-07 Form of official bonds provided for in chapter - Obligee in bond	61-06: 2
61-06-08 Officers or employees bonded in state bonding fund - Premium	
paid by whom	61-06: 2
61-06-09 Regular election of irrigation districts	61-06: 2
61-06-10 Notice of election after district is organized - Contents - Form	61-06: 2
61-06-11 Board of election of irrigation district - Failure of member of	
election board to be present	61-06: 2
61-06-12 Candidates at election - Filing names	61-06: 3
61-06-13 Ballot at irrigation district elections - Contents	61-06: 3
61-06-14 Oath required of members of election board - Chairman of	
election board to administer	61-06: 3
61-06-15 Opening and closing hours of polls at irrigation district elections	61-06: 3
61-06-16 Canvass of ballots after closing polls - Delivery of materials to	
directors	61-06: 3
61-06-17 Compensation of members of election board	61-06: 4
61-06-18 Return and canvass of votes by board of directors	61-06: 4
61-06-19 Secretary of board of directors to declare result of election -	
Contents	61-06: 4
61-06-20 Board of directors to declare results of election - Secretary to	
issue certificates of election	61-06: 4
61-06-21 Meetings of board - Regular and special - Quorum - Records of	
board	61-06: 4
61-06-21.1 Transactions of irrigation districts made public records - Grounds	
for removal of director or officer	61-06: 5
61-06-22 Directors and officers - Salary, mileage, and expenses	61-06: 5
61-06-23 [Repealed]	61-06: 5

CHAPTER 61-06

GOVERNMENT OF IRRIGATION DISTRICTS

61-06-01. Board of directors of irrigation district - Terms - Vacancies. If an irrigation district contains less than twenty thousand irrigable acres [8093.72 irrigable hectares] of land and is not divided into precincts or divisions, the board of directors consists of five directors who must be residents of the state and electors of the district and must be elected at large. Two directors elected at the election for the organization of the district serve until the first Tuesday in April following the first regular district election, and three serve until the first Tuesday in April following the second regular election.

If an irrigation district contains twenty thousand irrigable acres [8093.72 irrigable hectares] or more, it must be divided into five or seven divisions or precincts, as the case may be, and one director must be elected from and by the electors of each division or precinct.

If an irrigation district contains twenty thousand irrigable acres [8093.72 irrigable hectares] or more and is divided into five divisions or precincts, the board of directors of the irrigation district consists of five directors. Two directors elected at the election for the organization of the district serve until the first Tuesday in April following the first regular district election, and three directors serve until the first Tuesday in April following the second regular district election.

If an irrigation district contains twenty thousand irrigable acres [8093.72 irrigable hectares] or more and is divided into seven divisions or precincts, the board of directors of the irrigation district consists of seven directors. Three directors elected at the election for the organization of the district serve until the first Tuesday in April following the first regular district election, and four directors serve until the first Tuesday in April following the second regular district election.

The terms of office of the directors elected at the first election for the organization of the district must be determined by lot at their first meeting. Directors elected at subsequent elections serve for four years and until their successors are duly elected and qualified. In case the office of any director becomes vacant, the remaining members of the board shall fill the vacancy by appointment. A director appointed to fill a vacancy serves the unexpired term of the director whose office that director has been appointed to fill. If vacancies occur in the offices of a majority of the directors of an irrigation district, the remaining members and the state engineer shall fill the vacancies; and if the offices of all the directors become vacant, the state engineer shall appoint the members of the board and they serve until the next regular election of the district. Their successors in office must then be elected to serve the unexpired term of the directors whose offices became vacant. The unexpired term of office that each director thus elected fills must be determined by lot.

61-06-02. Directors elected subsequent to organization assume office - Time - Term. The directors elected subsequent to the organization of the district shall assume the duties of their office the first Tuesday in April after their election and shall hold office until their successors are elected and qualified.

61-06-03. Oath and bond of boards of directors - Filing. After receiving a certificate of election each director shall take the oath prescribed for civil officers, and shall be bonded in the sum of one thousand dollars. Such oath of office and bond shall be filed in the office of the state engineer.

61-06-04. Meeting of directors - Organization - Officers - Quorum - Term of officers. The directors elected at the first election in an irrigation district shall meet at the time and place designated by the state engineer and shall organize by selecting one of their members as chairman of the board. A temporary secretary shall be designated until a permanent secretary of the board has been appointed. After the organization of the board, a majority of the directors shall constitute a quorum for the transaction of such business as may come before the board. The board shall appoint a secretary, a treasurer, and an assessor of the district and such other officers or employees as the board shall deem necessary for the efficient conduct of the district's

business and shall fix their compensation. Officers and employees appointed by the board shall hold office during the pleasure of the board. The office of secretary, assessor, and treasurer may be held by the same person. Each succeeding board of directors shall choose or appoint its officers as herein provided.

61-06-05. Official bonds of assessor, district treasurer, and other employees - Approval and filing of bonds. The assessor shall be bonded in the amount of five hundred dollars and the district treasurer shall be bonded in an amount not less than double the amount of money that may come into the treasurer's hands, the amount to be determined by the board of directors, but such bond shall not be less than one thousand dollars. Other employees and appointive officers shall be bonded in such amounts as the board may prescribe. The official bonds of the assessor, treasurer, and other officers and employees shall be approved by the board. Such bonds shall be filed in the office of the state engineer.

61-06-06. District organized under provisions of chapter appointed fiscal agent of the United States. In case any district organized under the provisions of this chapter is appointed fiscal or other agent of the United States or is authorized by the United States to make collections of money for and on behalf of the United States in connection with any federal reclamation or irrigation project, the treasurer and each director shall furnish an additional official bond in such amount as the secretary of the interior may require, conditioned for the faithful discharge of the duties of office and the faithful discharge by the district of its duties as fiscal or other agent of the United States under any such appointment or authorization. Such additional bonds may be sued upon by the United States or by any person damaged by failure of such officer or district fully, promptly, and faithfully to perform the duties imposed by law.

61-06-07. Form of official bonds provided for in chapter - Obligee in bond. All official bonds provided for in this chapter shall be in the form prescribed by law for official bonds of county officers except that the obligee named in such bond shall be the irrigation district.

61-06-08. Officers or employees bonded in state bonding fund - Premium paid by whom. Every elective or appointive officer or employee of whom a bond is required under the provisions of this chapter shall be deemed to be bonded in the state bonding fund upon the giving of notice of such election or appointment by the secretary of the district to the insurance commissioner. Upon notification by the insurance commissioner of the amount of the premium of such bond or bonds, the secretary of the district forthwith shall remit the same.

61-06-09. Regular election of irrigation districts. The regular election of irrigation districts shall be held on the second Tuesday in February in each even-numbered year.

61-06-10. Notice of election after district is organized - Contents - Form. Within thirty-five days of, but at least twenty-five days prior to, any regular or special election held in an irrigation district, the secretary of the board of directors shall publish a notice of the election in the newspaper or newspapers of general circulation where the district is located and in the official newspaper of each county in which the district is located. The notice must specify the matters to be voted upon, the location of the polling place or places, and the time of their opening and closing. The notice must be in substantially the following form:

Notice is given that on _____, _____, an election will be held at _____ (here designate the polling place) for the purpose of electing _____ members of the board of directors and for the purpose of voting upon the questions submitted by the directors of the district. Polls will be opened at one p.m. and will be closed at five p.m. of that day. Notice is further given that any elector desiring to have the elector's name appear on the ballot must file a request in writing with the secretary of the district not less than twenty days before the election.

61-06-11. Board of election of irrigation district - Failure of member of election board to be present. Prior to the date of the regular election, the board shall appoint from the electors of the district one clerk and two judges who shall constitute the board of election. If the board shall fail to appoint such board of election, or if the members appointed do not attend at

the opening of the polls on the day of election, the electors of the district present at that hour may appoint the members of the election board or fill the place of an absent member thereof. The board of directors, in its order or resolution appointing the members of the board of election, shall designate the time and place where the election shall be held.

61-06-12. Candidates at election - Filing names. Any person desiring to be a candidate at an irrigation district election shall file that person's name with the secretary of the board not less than twenty days before the election. The secretary shall contact each candidate for the purpose of verifying the candidate's willingness to be a candidate at the election.

61-06-13. Ballot at irrigation district elections - Contents. At least fifteen days before an election in an irrigation district, the secretary shall prepare and have typewritten, mimeographed, or printed an official ballot containing the names of all candidates which have been filed with the secretary. The ballot shall:

1. Be headed "Official Ballot";
2. Contain all names thus filed;
3. Show the name of the district;
4. State the number of persons to be voted for;
5. Have blank spaces below for writing in other names; and
6. State any question or resolution submitted to the electors by the board of directors.

The provisions of this chapter shall not prevent any person desiring to be a candidate at such election and who has failed to file as provided in this chapter, from furnishing stickers to be attached to the ballot by the electors. Such stickers shall not be over one-half inch [1.27 centimeters] in width and shall have printed thereon one name only. Any elector who will be absent from the irrigation district on the day of the election may vote an absent voter's ballot at that election. The secretary shall provide the official ballot to any elector who makes application for an absent voter's ballot, and the absent voter must submit the absent voter's ballot to the secretary of the district, along with an affidavit that the ballot submitted represents the elector's vote at the election, on or before the day of the election. An absent voter's ballot must be the official ballot, and the ballot and affidavit must be actually delivered to the secretary or the election board before the polls close on election day. The secretary shall submit any absent voters' ballots to the election board on the day of the district election.

61-06-14. Oath required of members of election board - Chairman of election board to administer. Before opening the polls at an irrigation district election, each member of the election board shall take and subscribe the following oath or affirmation:

I do solemnly swear (or affirm) that I will perform my duties as judge or clerk (as the case may be) according to law and to the best of my ability.

Such oath or affirmation may be administered by any director of the district or any officer *authorized to administer oaths*. The board of directors shall designate one of the judges as chairman of the election board and the chairman of the election board shall have the authority to administer and certify all oaths or affirmations taken by other members of the election board and shall administer and certify all oaths or affirmations required during the progress of the election.

61-06-15. Opening and closing hours of polls at irrigation district elections. The polls shall be open at one p.m. of the election day and shall be kept open until five p.m. of the same day.

61-06-16. Canvass of ballots after closing polls - Delivery of materials to directors. Immediately after the polls are closed, the election board publicly shall open and proceed to

canvass the ballots cast and shall declare the result of such canvass. The chairman shall wrap securely all lists, tally sheets, oaths and affirmations, and other documents relating to the progress of the election and shall deliver the same to the secretary of the board of directors of the district.

61-06-17. Compensation of members of election board. Each member of the election board for an irrigation district election shall receive compensation as fixed by the board of directors for the member's services.

61-06-18. Return and canvass of votes by board of directors. The board of directors of the district shall meet at its usual place of meeting within thirty days after each election and canvass the returns. If all the returns have not been received, the canvass shall be postponed from day to day until all the returns have been received. The canvass shall be made in public and by opening the returns and ascertaining the vote for each person voted for, and declaring the result thereof, and also ascertaining the vote for and against each and every question or proposition voted upon, and declaring the result thereof.

61-06-19. Secretary of board of directors to declare result of election - Contents. The secretary of the board of directors, as soon as the result of the election is declared, shall enter upon the records of the board a statement of such result which shall show:

1. The whole number of votes cast in the district.
2. The names of the persons voted for.
3. Each question voted upon.
4. The number of votes cast for each person and the number of votes cast for and against each question voted upon at the election.

A copy of such statement shall be recorded in a permanent record of the board to be kept for that purpose. Such statement shall be signed by the secretary of the board and authenticated by the seal of the district. A copy of such statement thus signed and authenticated shall be filed with the county auditor of each county wherein the irrigation district is situated and a like copy shall be mailed to the state engineer.

61-06-20. Board of directors to declare results of election - Secretary to issue certificates of election. The board of directors shall declare elected the person having the highest number of votes cast for each office and shall declare the result of the election as to each question voted upon at the election. The secretary immediately shall make out and deliver to each person elected a certificate of election, signed by the secretary and authenticated with the seal of the district.

61-06-21. Meetings of board - Regular and special - Quorum - Records of board. The board shall hold regular meetings in its office or usual place of meeting in January, March, July, and November of each year. The board by rule or bylaw authorized by section 61-07-03 shall fix dates for such regular meetings and may also fix dates for additional regular meetings as it shall deem needed. The board also may hold special meetings as may be required for the transaction of the district's business. Special meetings shall be called by the secretary upon the order of the chairman of the board or upon the request in writing of two members. The order must be entered of record on the minutes of the meeting and notice of such special meeting shall be delivered or mailed to each member of the board at least five days prior to the date of such special meeting. A special meeting of the board may be called at any time by the chairman without notice and the meeting thus called shall be legal and valid if all members of the board of directors are present. A majority of the members of the board shall constitute a quorum for the transaction of business, but upon all questions requiring a vote there shall be a concurrence of at least a majority of the board. All records of the board must be open to the inspection of any elector during business hours.

61-06-21.1. Transactions of irrigation districts made public records - Grounds for removal of director or officer. The minutes of all meetings, and all contracts, agreements, leases, and other business transactions of the board of directors of an irrigation district shall be public records and open to inspection by any person interested, or that person's attorney or agent, at all reasonable times. The terms of any proposed agreement or contract with federal or state agencies shall be deemed a business transaction open to public examination. Refusal on the part of any director or officer of an irrigation district to permit examination of the records of the irrigation district or to give any information available concerning business transactions of the district shall be grounds for removal of such director or officer in an action brought in the district court.

61-06-22. Directors and officers - Salary, mileage, and expenses. The compensation for each director per day while performing duties as a member of the board must be fixed by the board of directors but may be no more than sixty-two dollars and fifty cents per day. The allowance for meals and lodging expenses must be at the same rate and under the same conditions as provided for state officials and employees. The allowance for travel expenses must be at the same rate as provided by section 11-10-15 and must be evidenced by a subvoucher or receipt in a manner determined by the board of directors. The salary of the secretary, assessor, and treasurer must be determined by the board of directors.

61-06-23. Officers not to be interested in contract - Penalty. Repealed by S.L. 1975, ch. 106, § 673.

CHAPTER 61-07 POWERS OF IRRIGATION DISTRICTS

<u>Section</u>	<u>Page</u>
61-07-01 Powers and duties of irrigation district	61-07: 1
61-07-02 Legal title to property acquired in corporate name.....	61-07: 1
61-07-03 Powers and duties of board of directors	61-07: 1
61-07-04 Construction across streams, highways, railroads, and ditches - Right of way	61-07: 3
61-07-05 Purchase of land after foreclosure of tax lien	61-07: 3
61-07-06 Contracts entered into by district - Contracts for materials - Reservations in contracts	61-07: 3
61-07-07 Board to formulate general plan of operation - Contents	61-07: 3
61-07-08 Surveys, examinations, and plans made to determine cost of construction in district - State engineer to prepare report	61-07: 3
61-07-09 Advertising for bids	61-07: 4
61-07-10 Expense of purchasing and acquiring property and constructing irrigation works - Insufficiency of bonds	61-07: 4
61-07-11 District entering into agreements with others for payment of cost of establishing or constructing works	61-07: 4
61-07-12 Expenses - How paid	61-07: 4
61-07-13 Agreement by board to conform to laws of various departments or agencies to secure financial aid	61-07: 4
61-07-14 Irrigation districts may accept acts of Congress - Contracting with United States - Provisions of section not a limitation	61-07: 4
61-07-15 District may obtain financial aid from United States	61-07: 5
61-07-16 Irrigation district shall provide for proper drainage of lands - Payment	61-07: 5
61-07-17 Apportionment of water when supply insufficient	61-07: 5
61-07-18 Duty of board to provide water supply	61-07: 5
61-07-19 Petition for specific orders or changes in canals or other conveyance systems - Methods	61-07: 5
61-07-20 Provisions of title not to take away vested rights	61-07: 6
61-07-21 Incurring liability in excess of provisions of chapter prohibited - Exception	61-07: 6
61-07-22 Commencement of special proceedings to confirm contracts, special assessment, or other action	61-07: 6
61-07-23 Petition by board for court to examine and approve contracts or assessments - Contents of petition	61-07: 6
61-07-24 Hearing of petition - Notice of filing and hearing	61-07: 6
61-07-25 Answer to petition - Defense by person interested	61-07: 7
61-07-26 Powers of court upon trial - Amendment of petition	61-07: 7
61-07-27 Conclusion of hearing - Findings - Decree - Costs of hearing - Filing copies of findings	61-07: 7

61-07-28	Procuring water supply from district outside of state - Validity and legality	61-07: 7
61-07-29	Board may enter into a contract for supply of water - Payment - Source	61-07: 7
61-07-30	Contract for payment for supply of water - Assessments may be made against lands	61-07: 8
61-07-31	Contract for supply of water extending over one year approved at election - Regulations governing election	61-07: 8
61-07-32	Liability for failure to deliver water	61-07: 8
61-07-33	Appeal to district court - Time - Undertaking required - Docketing	61-07: 8

CHAPTER 61-07 POWERS OF IRRIGATION DISTRICTS

61-07-01. Powers and duties of irrigation district. Each irrigation district:

1. Shall be a body corporate.
2. Shall possess all the powers and duties usual to corporations organized for public purposes and those conferred by the provisions of this title or which may be conferred by law.
3. May sue and be sued in its corporate name and may institute and maintain any and all actions and proceedings, including suits at law or in equity, necessary or proper, in order to carry out fully the provisions of this chapter, or to enforce, maintain, protect, or preserve any and all rights, privileges, and immunities created by this title, or acquired in pursuance thereof.
4. May contract and be contracted with.
5. May hold, lease, own, and possess such real and personal property as shall come into its possession by contract, conveyance, purchase, gift, or otherwise.
6. Subject to chapter 32-15, may exercise the right of eminent domain for the purpose of acquiring right of way for ditches, flumes, canals, pipelines, and other conveyance systems, sites for dams and reservoirs, wells and well fields, related drainage systems, and for any other purpose or works necessary to establish and construct a complete system of irrigation works.

In all courts, actions, suits, or proceedings, the board of directors may sue, appear and defend, in person or by attorneys, in the name of such irrigation district.

61-07-02. Legal title to property acquired in corporate name. The legal title to all property acquired by an irrigation district shall vest in such district in its corporate name.

61-07-03. Powers and duties of board of directors. The board of directors of an irrigation district shall:

1. Manage and conduct the business affairs of the district.
2. Make and execute all necessary contracts.
3. Employ such officers, agents, and employees as may be necessary to conduct efficiently the business of the district and to fix their compensation.
4. Adopt a seal for the district. The seal shall be kept in the custody of the secretary.
5. Establish bylaws and rules for distribution to and for the information of electors of the district and water users, and fix charges or rentals to be paid by water users. The bylaws and rules shall be printed, typewritten, or mimeographed in convenient form.
6. Enter upon any land within the district to make surveys and to locate the main lines and the necessary branches for any canals, pipelines, or other conveyance systems, and maintain and keep in good repair the irrigation works within the district. Its agents and employees shall have the same right.
7. Acquire by purchase, condemnation in accordance with chapter 32-15, or otherwise:

- a. Rights of way for ditches, canals, pipelines, and other conveyance systems and sites for dams and reservoirs, wells and well fields, and other works for the appropriation of ground and surface water, and for pumping plants.
 - b. All lands, easements, and any and all property necessary for the construction, use, maintenance, repair, and improvement of dams, reservoirs, wells and well fields, and other works for the appropriation of ground and surface water, and canals, pipelines, and other conveyance systems.
 - c. Electric powerlines for the conveyance of electric power to operate pumping plants and all necessary appurtenances thereto.
 - d. Water rights, but the board shall be required to offer an alternative water supply of equal quantity and comparable quality, either through the district works or otherwise, to the holder of any water rights which have been condemned.
8. Subject to the limitations contained in this chapter and chapter 32-15, acquire by purchase, condemnation, or otherwise, any existing irrigation works for the use of the district.
 9. Submit, whenever the board shall deem it advisable, to the electors of the district, at any regular or special election, any question, proposition, or proposal relative to the affairs of the district.
 10. Accept, on behalf of the district, appointment of the district as fiscal agent of the United States, or of any department or agency thereof, or authorization by the United States, or of any department or agency thereof, to make collections of money for and on behalf of the United States in connection with any federal reclamation or irrigation project. The board shall have full power to do any and all things required by the rules established by any such department or agency of the federal government relative to such project.
 11. Subject to the limitations provided in this title, determine a plan or method for raising funds to finance the cost of constructing irrigation works within the district or to provide funds for the purchase of such irrigation works. The plan may provide for the issuance of bonds, or the issuance of district improvement warrants, or the payment of such construction costs, or purchase price, by creating a fund obtained from water rentals or charges to water users, or for a combination of such methods for raising funds.
 12. Exercise all rights, powers, and authority, express or implied, that may be necessary to do and perform and carry out all of the express purposes of this chapter and of all purposes reasonably implied as incidental thereto.
 13. Enter into contracts and leases with the water commission of North Dakota or with the United States of America, its instrumentalities, departments, or agencies, for the purpose of financing the construction of any irrigation works authorized by law, and in such contracts and leases may authorize such commission or the United States, its instrumentalities, departments, or agencies, as the case may be, to supervise and approve the construction, maintenance, and operation of such irrigation works, or any part or portion thereof, until such times as any money expended, advanced, or loaned by the commission or by the United States, its instrumentalities, departments, or agencies, and agreed to be repaid thereto by said board, shall have been repaid fully. The board may accept cooperation from such commission or from the United States, its instrumentalities, departments, and agencies, in the construction, maintenance, and operation, and in financing the construction of any work authorized by the board. The board shall have full power to do any and all things necessary to avail itself of such aid, assistance, and cooperation under

existing or future state laws or federal legislation enacted by the Congress of the United States.

14. Acquire real property, buildings, improvements, and equipment used or useful in connection with storing, warehousing, distributing, or selling agricultural products, which may be located within or outside the district.

61-07-04. Construction across streams, highways, railroads, and ditches - Right of way. The board may construct irrigation works across any stream of water, watercourse, street, avenue, highway, railway, canal, ditch, flume, pipeline, or other transportation system or utility, which the route of any canal may intersect or cross in such manner as to afford security for life and property, but the board shall restore the same, when so crossed or intersected, to its former state as near as may be, or in a manner sufficient to avoid unnecessary impairment of its usefulness. Every company whose railroad or utility shall be intersected or crossed by such works shall unite with the board in forming such intersections and crossings, and shall grant the privilege aforesaid. If the board cannot agree with such railroad company, or with the owners and controllers of the property, thing, or franchise to be crossed, upon the amount to be paid on account of such crossing or the point at which or the manner in which the crossing shall be made, the same shall be ascertained and determined in all respects as is provided for the taking of land. The right of way is given, dedicated, and set apart, to locate, construct, and maintain such works over and through any of the lands which are or may be the property of the state. There are given, dedicated, and set apart, for the uses and purposes provided in this chapter, all water and water rights owned by this state within the district.

61-07-05. Purchase of land after foreclosure of tax lien. When the board shall deem it necessary to protect the interests of the district, or of the electors thereof, or to protect the interests of bondholders or other creditors of the district, it, if funds are available for that purpose, may purchase land within the district after foreclosure by the county for unpaid and delinquent taxes and may own and sell any lands thus acquired.

61-07-06. Contracts entered into by district - Contracts for materials - Reservations in contracts. All contracts entered into for any work provided for in this chapter shall be entered into in the name of the district and shall be executed on the part of the district by the chairman of the board of directors and countersigned or attested by the secretary. When the contract is signed by the contractor, it shall be filed in the office of the secretary of the district. Contracts for materials or for construction of any nature shall require the work to be done or the materials to be furnished in accordance with, and pursuant to, plans and specifications on file with the secretary. There shall be reserved in each such contract for construction the right of the board of directors, in case of the improper construction of such work, to suspend work thereon at any time, and to relet the contract therefor, or to order a reconstruction of said work or any part thereof improperly done. Each such contract shall state the time on or before which such work must be completed and shall state how such contract will be paid.

61-07-07. Board to formulate general plan of operation - Contents. As soon as practicable after the organization of an irrigation district, the board of directors, by a resolution entered on its records, shall formulate a general plan of its proposed operation which must state:

1. What constructed works or other property are proposed to be purchased, the purchase price, what construction work is proposed to be done, and the estimated cost of the construction.
2. Whether funds to pay the purchase price or cost of construction will be raised by issuing bonds or by creating a fund through the collection of rentals, charges from water users, or by creating a fund by levying assessments against the lands benefited, or whether it is contemplated to raise funds by the use of all or a combination of those methods of raising funds.

61-07-08. Surveys, examinations, and plans made to determine cost of construction in district - State engineer to prepare report. For the purpose of ascertaining

the cost of any irrigation construction work in a district, the board shall cause such surveys, examinations, and plans to be made as may demonstrate the practicability of the plan and furnish the proper basis for an estimate of the cost of carrying out the plan. All surveys, examinations, maps, plans, and estimates must be made under the direction of a registered professional engineer, who may be the state engineer, and must be certified by the registered professional engineer. The board shall submit a copy to the state engineer who shall prepare a summary report and file the report with the board. The report must contain such matters as in the judgment of the state engineer are desirable. Upon receiving the report, the board of directors shall determine the amount of money required to be raised.

61-07-09. Advertising for bids. After adopting a plan of irrigation works, the board shall secure bids as provided in chapter 48-01.2. Contracts for the purchase of materials must be awarded to the lowest and best bidder. The person to whom a contract may be awarded shall furnish a bond with good and sufficient sureties, to be approved by the board, payable to such district for its use, in an amount at least equal to the contract price, conditioned for the faithful and complete performance of the contract. The work must be done under the direction and to the satisfaction of the engineer and must be approved by the board. This section does not apply in case of any contract between the district and the United States, or any department, bureau, or agency thereof, or with the state water commission.

61-07-10. Expense of purchasing and acquiring property and constructing irrigation works - Insufficiency of bonds. The cost and expense of purchasing and acquiring property and of purchasing or constructing the irrigation works and improvements mentioned in this chapter shall be paid out of funds raised for such purpose. In case bonds, or the proceeds from the sale of any series of bonds, are insufficient for the purpose for which they were issued, additional bonds may be issued after submission of the question, at a general or special election, to the electors of the district. Additional improvement warrants may be issued to supplement warrants already authorized and issued. Such bonds and improvement warrants must be paid in the order of their priority.

61-07-11. District entering into agreements with others for payment of cost of establishing or constructing works. Any irrigation district, subject to the approval of the electors at a general or special election, may enter into an agreement or contract with the United States or with any department, bureau, or agency thereof, or with the state water commission, or with any person, firm, corporation, or limited liability company, for the establishment, construction, and completion of the necessary irrigation works, and in such contract or agreement may provide for the payment of the cost of establishing and constructing such works by the levy and collection of assessments against the lands benefited and by annual payments from funds raised by the collection of tolls and water charges paid by persons who have received and used water for the irrigation of their lands.

61-07-12. Expenses - How paid. For the purpose of defraying the expense of organizing the district and the maintenance, operation, management, repair, and improvement of irrigation works, including salaries of officers and employees, the board either may collect water rentals or may levy assessments therefor, or may collect such charges and also levy assessments.

61-07-13. Agreement by board to conform to laws of various departments or agencies to secure financial aid. For the purpose of obtaining financial aid from the United States, or from any department, bureau, or agency thereof, or from the state water commission, the board of a district may agree to conform to the laws of the United States and to the regulations of any department, bureau, or agency thereof, or may agree to conform to the regulations of the state water commission and to the supervision of such federal agency, bureau, or department or to the supervision of the state water commission, as the case may be.

61-07-14. Irrigation districts may accept acts of Congress - Contracting with United States - Provisions of section not a limitation. Any irrigation district organized under the laws of this state may accept the provisions of any act of the Congress of the United States applicable to such district and may obligate itself to comply with such laws, rules, and regulations as may be

promulgated by any department of the United States in pursuance of such acts. An irrigation district contracting with the United States under the provisions of this chapter shall be governed in all matters by the laws of this state relating to irrigation or drainage districts, as the case may be, except in such things as may be provided otherwise, for such district. The provisions of this section shall not limit the rights which any irrigation district has under existing laws to purchase a water supply or otherwise to contract and shall be cumulative thereto.

61-07-15. District may obtain financial aid from United States. Any irrigation district organized under the laws of this state for irrigation purposes may enter into a contract with the United States whereby the bonds of the district are guaranteed by the United States, or financial credit is extended by the United States to the district for the sale, purchase, or use of any irrigation works and related drainage systems, and any other property owned or to be acquired for the use of such district.

61-07-16. Irrigation district shall provide for proper drainage of lands - Payment. Any irrigation district organized under the provisions of this title shall provide for the proper drainage of any and all lands embraced within its limits which are, or have been, subirrigated by reason of the lawful use of water from its canal by the owner or lessee of the lands subirrigated, or from any cause which is not the fault, or which does not have the consent, of such owner or lessee. For such purpose, such district shall have all the authority granted in this title to:

1. Levy special assessments or otherwise provide funds necessary properly to drain such lands;
2. Enter upon lands for the purpose of making surveys;
3. Subject to chapter 32-15, exercise the right of eminent domain;
4. Contract for the construction of necessary drains; and
5. Extend such drains outside of the limits of such district for the purpose of conducting the drainage water to other lands upon which the same may be used lawfully or to return the same to some natural watercourse.

The powers granted by this section shall include the power to enter into a contract with the United States to carry out and effectuate all proper drainage of the district, or any part thereof, and any such contract shall be treated to all intents and purposes as if made under section 61-07-14.

61-07-17. Apportionment of water when supply insufficient. In case the water supply shall not be sufficient to supply continuously the lands susceptible of irrigation therefrom, the board shall apportion in a just and equitable proportion, a certain amount of such water upon certain or alternate days to different localities as in its judgment may be best for the interests of all parties concerned, and with due regard to the legal and equitable rights of all.

61-07-18. Duty of board to provide water supply. When the water supply of an irrigation district can be applied beneficially to the lands in the district, the board shall keep the waters flowing through the irrigation works under its control to the full capacity of the irrigation works in times of sufficient water supply but without interfering with the rights of senior appropriators.

61-07-19. Petition for specific orders or changes in canals or other conveyance systems - Methods. Upon the filing of a petition in the office of the board of any irrigation district, signed by electors who own a majority of the total number of acres [hectares] subject to assessment for construction or other costs, requesting that rules be adopted by the board permitting and providing for any of the following specific orders or changes in the method of operating its canal, pipeline, or other conveyance system, such board immediately shall provide for the adoption and enforcement of the same:

1. That a measuring device of a type approved by the state engineer be placed in or near the headgate of any main diverting gate of the main canal, or in any pipeline, or other main conveyance system in order that a continuous record shall be kept by such district of the amount of water received into the canal or pipeline for the use of the lands in such district.
2. That a measuring device of a type approved by the state engineer be placed in the headgates or valves of all main laterals and distributing laterals within the district from and by which water is diverted to tracts or units of twenty acres [8.09 hectares], or more, for the purpose of determining at all times the amount of water going to or being received upon any and all such tracts of land, and that it be made the duty of the district to keep a separate and correct record of the amount of water delivered through each of such headgates and valves at all times, and to file the same in the office of the board for public inspection.

61-07-20. Provisions of title not to take away vested rights. None of the provisions of this title relating to irrigation works shall be deemed to authorize the district or any person to divert the waters of any river, creek, stream, canal, or ditch from its channel, whereby the vested rights of any person having any interest in such river, creek, stream, canal, or ditch, or the waters thereof, are invaded or interfered with unless previous compensation is ascertained and paid therefor, under the laws of this state authorizing the taking of private property for public use. However, if the district exercises the authority of eminent domain against any vested water rights of any person, the district shall be required to offer an alternative water supply of equal quantity and comparable quality, either through the district works or otherwise, to such person.

61-07-21. Incurring liability in excess of provisions of chapter prohibited - Exception. Except as otherwise provided in section 61-07-16, the board or other officers of the district may not incur any debt or liability whatever, either by issuing bonds or otherwise, in excess of the express provisions of this title, and any debt or liability incurred in excess of such express provisions shall be and remain absolutely void.

61-07-22. Commencement of special proceedings to confirm contracts, special assessment, or other action. The board of any irrigation district organized under the provisions of this title, before issuing any bonds or improvement warrants of such district, shall, and in its discretion, before making any contract or levying any assessment or taking any special action, may, commence a special proceeding in and by which the proceedings of such board and of such district, the making of any contract or the levying of any assessment or the taking of any special action, shall be judicially examined, approved, and confirmed, or disapproved and disaffirmed.

61-07-23. Petition by board for court to examine and approve contracts or assessments - Contents of petition. The board of an irrigation district, if deemed advisable, may file, or cause to be filed, in the district court of any county in which the lands of the district are situated, a petition praying that the proceedings had for the issuance of bonds or improvement warrants, or that the proceedings had preliminary to the making of any contract or for levying assessments or taking any special action, be examined, approved, and confirmed by the court. Such petition shall state the facts concerning the proceedings had for the issuance of bonds or improvement warrants, the making of any contract, levying any assessment, or any special action, of the board, as the case may be, and shall state generally that the irrigation district was organized and that the directors were elected and qualified, but the petition need not set forth the proceedings resulting in the organization of the district or the election of the directors.

61-07-24. Hearing of petition - Notice of filing and hearing. The court shall fix the time for the hearing of the petition provided for in section 61-07-23 and shall order the clerk of court to give and publish a notice of the filing of the petition, stating the time when and the place where the court will hear the petition, and stating further that any person interested in the organization of the district, or in the proceedings for the issuance of bonds or improvement warrants, or in the assessments levied, or in the special action taken by the board, as the case

may be, on or before the day fixed for hearing of the petition, may answer the petition. The petition may be referred to and described in the notice as the petition of _____ (name of petitioner) requesting that the proceedings set forth therein be examined, approved, and confirmed by the court. The notice shall be given by publishing the same in the official newspaper of the county in which the petition is filed, once each week for two consecutive weeks. The hearing shall be held, in the discretion of the court, not less than fifteen days nor more than sixty days after the last publication of the notice.

61-07-25. Answer to petition - Defense by person interested. Any person interested in the district or in the issue or sale of the bonds may answer the petition. The provisions of title 28 and the North Dakota Rules of Civil Procedure relating to the answer to a complaint shall be applicable to an answer to a petition. The person answering the petition shall be the defendant in the special proceeding and the board shall be the plaintiff. Every material statement of the petition not specifically controverted by the answer, for the purpose of such special proceeding, shall be taken as true. Each person failing to answer the petition shall be deemed to admit as true all the material statements of the petition. The rules of pleading and practice provided by title 28 and the North Dakota Rules of Civil Procedure which are not inconsistent with the provisions of this chapter, are applicable to the special proceeding provided for in this chapter.

61-07-26. Powers of court upon trial - Amendment of petition. At the time and place set for the hearing provided for in section 61-07-24, the court shall find and determine whether the notice of the filing of such petition has been posted and published. When the court has determined that it has jurisdiction to hear the petition, it shall proceed with the hearing and shall conduct the same as in the case of a trial of an equity action without a jury. The court shall examine into and determine the legality and validity of proceedings for the organization of the district from and including the petition for the organization thereof, and all matters affecting the legality or validity of proceedings for the issuance of bonds or improvement warrants, or the making of contracts by the board of directors, and the levying of assessments. The court shall disregard any error, irregularity, or omission which does not affect the substantial rights of the parties to such hearing. The court shall permit the petition to be amended so as to conform to the evidence and facts presented at such hearing.

61-07-27. Conclusion of hearing - Findings - Decree - Costs of hearing - Filing copies of findings. Upon the conclusion of the hearing provided for in section 61-07-24, the court shall determine the legality and validity of the proceedings had for the issuance of bonds or improvement warrants, the making of any contract, or the levying of any assessments, as the case may be, and shall determine the validity and legality of any other matter properly before the court. The court shall prepare its findings of fact and conclusions of law and shall order that the decree of the court be entered in conformity therewith. The costs of the proceeding, in the discretion of the court, may be allowed and apportioned between the parties thereto. The secretary of the board of directors of the district shall file with the state engineer a certified copy of the court's findings of fact, conclusions of law, order, and decree.

61-07-28. Procuring water supply from district outside of state - Validity and legality. When any irrigation district shall find it necessary to procure its supply of water for the irrigation of the lands within the district from outside the boundaries of this state, such district may enter into an agreement or contract with any state board, commission, or bureau, or with any person, association, company, corporation, limited liability company, or irrigation district, having the control and jurisdiction over the water of such other state, for water rights therein or for supplying the district with water sufficient for its irrigation needs. The making of such contract and the issuance of bonds or improvement warrants and the levying of assessments, or other method agreed upon for the payment of rights, franchises, or water charges to obtain the required supply of water shall be deemed valid, and of full force and effect, and shall have the same validity and legality as though the same rights and franchises existed wholly within this state.

61-07-29. Board may enter into a contract for supply of water - Payment - Source. The board of any irrigation district in this state may enter into a contract for a supply of water with the United States, or with any department or agency thereof, or with the state water commission,

or with any person, association, firm, corporation, or limited liability company, or with another irrigation district, for the irrigation of lands within the district. Under such contract the board may agree to pay for the water furnished or delivered to the district from collections obtained from tolls or charges paid by water users and from assessments levied against the lands irrigated. The source of supply of such water may be either within or without the boundaries of this state. Such water supply may be the entire supply for such district or may supplement an appropriation of water already made by said district.

61-07-30. Contract for payment for supply of water - Assessments may be made against lands. If a contract, made and entered into by any irrigation district pursuant to the provisions of section 61-07-29, provides for the payment of the entire purchase price of an annual supply of water, the board, if other revenues are not available for the payment of such purchase price, shall adopt a resolution that assessments be made against the lands within the district sufficient to produce the required amount. Such amount shall be apportioned, assessed, and levied at the time specified in this chapter for the apportionment and levy of assessments.

61-07-31. Contract for supply of water extending over one year approved at election - Regulations governing election. If a contract for the supplying of water provides for a payment to be made extending for a period of more than one year from the date of making such contract, the board of such irrigation district shall submit such contract to the legal voters of such district at any general election, or at a special election called for the approval or disapproval of the contract. If a special election is called for such purpose, the notice of election, the conduct of said election, and the canvass of the votes, so far as practicable, shall be the same as in a regular election of the district. The notice of such election need not give the entire contract, but shall be sufficient if it shall state in a general way the substance of the proposed contract. The ballot at such election shall be in substantially the following form:

For approval of contract for water supply	<input type="checkbox"/>
Against approval of contract for water supply	<input type="checkbox"/>

If a majority of the electors voting on said proposition vote for approval of such contract, the board shall enter into such contract and thereafter, at the time the other taxes of the district are levied, shall levy a tax on the taxable property of the district sufficient to pay the amount due on said contract and to become due on said contract before the next annual levy in said district.

61-07-32. Liability for failure to deliver water. Any irrigation district within this state shall be liable in damages for negligence in delivering or failing to deliver water to the users from its canal, but such liability cannot be enforced unless the party suffering such damage, within thirty days after such district shall fail to deliver water, shall serve a notice in writing on the chairman of the board of such district, setting forth particularly the acts committed or the omission of duties to be performed on the part of the district which are claimed to constitute such negligence or omission, and stating that the party expects to hold such district liable for whatever damages may result. Such action shall be brought within one year from the time the cause has accrued.

61-07-33. Appeal to district court - Time - Undertaking required - Docketing. An appeal may be taken to the district court from any order or decision of the board of an irrigation district, by any person who is aggrieved thereby. The appeal must be taken in accordance with the procedure provided in section 28-34-01. To effect an appeal, an undertaking must be executed by the appellant and sufficient surety conditioned that the appellant will prosecute such appeal without delay and will pay all costs adjudged against the appellant in the district court. The undertaking must be made in favor of the irrigation district as the obligee and may be enforced by the district. The appeal must be taken to the district court of the county in which the land claimed to be affected adversely by the order or decision appealed from is situated, and if the land is situated in more than one county, the appeal may be taken to the district court of any county in which any part of the land is situated. Any appeal thus taken must be docketed in the district court as any civil cause commenced in the district court is docketed and must be heard and determined without a jury. Appeals to the supreme court may be taken by the irrigation district or any other party to the cause from any judgment entered in the district court in any such

cause and from any order of said court if an appeal would lie from such an order if the same were entered by the court in any other civil action.

CHAPTER 61-08 **FISCAL AFFAIRS OF IRRIGATION DISTRICTS**

<u>Section</u>	<u>Page</u>
61-08-01 Resolution to institute initial proceedings for bonds - Contents - Adoption	61-08: 1
61-08-02 Adopting initial resolutions by board - Date of election - Contents of resolution - Conduct of election	61-08: 1
61-08-03 Notice of election - Contents	61-08: 1
61-08-04 Ballot for election - Contents - Spoiled or blank ballots not counted	61-08: 1
61-08-05 Majority of votes favoring issuance of bonds - Duty of board	61-08: 1
61-08-06 Bonds - Terms	61-08: 1
61-08-07 Bonds - Rate of interest	61-08: 2
61-08-08 Denominations of bonds - Payable in lawful money of United States	61-08: 2
61-08-09 Execution of bonds - Validity of bonds not impaired by change in officers	61-08: 2
61-08-10 [Repealed]	61-08: 2
61-08-11 [Repealed]	61-08: 2
61-08-12 Sale of bonds - Contents of notice	61-08: 2
61-08-13 Opening bids for bond issues - Record of bids kept - Bids accompanied by check	61-08: 2
61-08-14 Awarding sale of bond issue - Rejecting bids	61-08: 2
61-08-15 [Repealed]	61-08: 2
61-08-16 [Repealed]	61-08: 2
61-08-17 [Repealed]	61-08: 2
61-08-18 [Repealed]	61-08: 2
61-08-19 [Repealed]	61-08: 2
61-08-20 [Repealed]	61-08: 3
61-08-21 [Repealed]	61-08: 3
61-08-22 Bonds may be secured by trust indenture - Powers vested in trustee	61-08: 3
61-08-23 Where money received from bond issue placed - Lien on money	61-08: 3
61-08-24 Board may appoint fiscal agent - Who may be	61-08: 3
61-08-25 Bonds and contracts payable from assessments of real property and from water charges	61-08: 3
61-08-26 County treasurer to be custodian of funds	61-08: 3
61-08-27 District treasurer to remit moneys to county treasurer - Crediting proper fund	61-08: 3
61-08-28 Payment of bonds and interest	61-08: 3
61-08-29 Claims paid by district treasurer - Insufficient funds - Verification of claims	61-08: 4
61-08-30 Board may withdraw funds from district and deposit with county treasurer - Duty of treasurer	61-08: 4
61-08-31 County treasurer to make report to board monthly	61-08: 4

61-08-32	District treasurer to make report to board - Verifying and filing	61-08: 4
61-08-33	[Repealed].....	61-08: 4
61-08-34	Refunding irrigation district bonds - Negotiating new bonds	61-08: 4
61-08-35	Procedure used in issuing refunding bonds	61-08: 4
61-08-36	[Repealed].....	61-08: 4
61-08-37	[Repealed].....	61-08: 4
61-08-38	[Repealed].....	61-08: 4
61-08-39	Assessments - Proceeds - Levy.....	61-08: 5
61-08-40	Provisions relating to payment of bonds applicable to refunding bonds.....	61-08: 5
61-08-41	Issuance of revenue bonds	61-08: 5
61-08-42	Payment and security for revenue bonds.....	61-08: 5

CHAPTER 61-08

FISCAL AFFAIRS OF IRRIGATION DISTRICTS

61-08-01. Resolution to institute initial proceedings for bonds - Contents - Adoption. Proceedings for the issuance of bonds by an irrigation district must be instituted by the adoption of an initial resolution by the board of directors of the district. The initial resolution must state:

1. The maximum principal amount of bonds proposed to be issued.
2. The purpose for which the bonds are proposed to be issued.
3. The total amount of bonded indebtedness, if any, of the district.
4. Any other statement of fact deemed advisable by the board.

The initial resolution may be adopted by a majority of the board at any regular meeting or at any special meeting of which the prescribed notice has been given.

61-08-02. Adopting initial resolutions by board - Date of election - Contents of resolution - Conduct of election. After the adoption of an initial resolution as provided in section 61-08-01, the board, by a resolution, shall provide for submitting to the electors of the district the question whether the initial resolution providing for the issuance of bonds shall be approved. The date of such election shall not be less than twenty days after the adoption of such initial resolution by the board. The board, in such resolution, shall designate the date of such election, the polling hours, and polling place thereof. Such election shall be conducted and the returns made and canvassed as in the case of a regular election of the district.

61-08-03. Notice of election - Contents. A notice of the election containing a complete copy of the initial resolution provided for in section 61-08-01 shall be given in the manner provided for a regular election of the district.

61-08-04. Ballot for election - Contents - Spoiled or blank ballots not counted. The ballot for a bond election shall be written or printed and shall state the question in substantially the following form:

Shall the _____ irrigation district issue its bonds in the amount of not to exceed \$_____ (here insert the amount) for the purpose of _____ (here insert the purpose)?

Yes ☐
No ☐

Spoiled or blank ballots cast at such election shall not be counted either for or against the proposed issue.

61-08-05. Majority of votes favoring issuance of bonds - Duty of board. If a majority of the votes cast at a bond election are in favor of the proposal to issue bonds as stated in the initial resolution, the board of directors shall proceed to sell, issue, and deliver such bonds as provided in this chapter.

61-08-06. Bonds - Terms. Bonds issued by any irrigation district under the provisions of this chapter must be in the denominations and form, be subject to redemption with or without premium, and be subject to any other terms or conditions as the board of directors may determine, and must mature in not more than forty years from the date of the bonds. If the maturities are serial, the first installment of principal must fall due not more than three years, and the last installment not more than forty years, from the date of the bonds.

61-08-07. Bonds - Rate of interest. Every bond provided for in this chapter must be a negotiable instrument and must bear interest at a rate or rates resulting in an average annual net interest rate which must not exceed twelve percent per annum if the bonds are sold at private sale. There is no interest rate ceiling on bonds sold at public sale or to the state of North Dakota or any of its agencies or instrumentalities. Each bond must specify the time and place of payment of the principal.

61-08-08. Denominations of bonds - Payable in lawful money of United States. The entire issue of bonds may be composed of bonds of a single denomination or of two or more denominations. Such bonds shall recite that they are payable in lawful money of the United States.

61-08-09. Execution of bonds - Validity of bonds not impaired by change in officers. The bonds issued under the provisions of this chapter must be executed in the name of and for the district by the manual or facsimile signatures of the chairman and secretary of the board. The validity of every bond so executed is not impaired by the fact that a subscribing or attesting officer has ceased to be an officer of the district before delivery to the purchaser.

61-08-10. Registration of bond by secretary - Contents - Copy filed with county auditor - Secretary to endorse. Repealed by S.L. 1997, ch. 518, § 24.

61-08-11. Cancellation of bonds authorized but not paid - Destruction of bonds - Affidavit of destruction - Filing. Repealed by S.L. 1997, ch. 518, § 24.

61-08-12. Sale of bonds - Contents of notice. Bonds may be sold at private sale without notice or at public sale after a notice calling for bids has been published at least once in the official newspaper of each county in which the district is situated not less than fifteen days nor more than thirty days before the date specified for receiving bids. The notice may be in any form but must specify the amount of bonds offered for sale and the date or dates of the maturity thereof, and the notice must specify that the bids must be sealed and in writing and must state the time when and place where bids will be received and will be opened.

61-08-13. Opening bids for bond issues - Record of bids kept - Bids accompanied by check. At the time specified for opening the bids for bonds, the secretary of the board publicly shall open the bids in the presence of the board, and after the bids have been opened, the secretary shall enter in a permanent record the amount and rate of interest of each bid and the name and address of the bidder. Each bid must be accompanied by a certified check, cashier's check, surety bond, or bank draft in the amount of not less than one percent of the bid.

61-08-14. Awarding sale of bond issue - Rejecting bids. The board of directors shall award the sale of bonds to the bidder who agrees to purchase them upon the terms most favorable to the district, except that the board may reject any and all bids. No sale may be for less than ninety-eight percent of the par value and accrued interest on the bonds.

61-08-15. Officer of irrigation district accepting commission or compensation in regard to bonds - Misdemeanor. Repealed by S.L. 1975, ch. 106, § 673.

61-08-16. Registration of bearer bonds - Transfer must be recorded in register - Registration not to affect negotiability of coupons. Repealed by S.L. 1997, ch. 518, § 24.

61-08-17. When issuance of district improvement warrants permissible. Repealed by S.L. 1997, ch. 518, § 24.

61-08-18. Use of district improvement warrants - Assessments levied to raise funds to pay improvement warrants. Repealed by S.L. 1997, ch. 518, § 24.

61-08-19. Improvement warrants - Amount - When payable - Maturity. Repealed by S.L. 1997, ch. 518, § 24.

61-08-20. Interest on warrants - Signatures - Contents. Repealed by S.L. 1997, ch. 518, § 24.

61-08-21. Registration of warrants by secretary - Filing copy of record in county auditor's office. Repealed by S.L. 1997, ch. 518, § 24.

61-08-22. Bonds may be secured by trust indenture - Powers vested in trustee. In the discretion of the board, bonds may be secured by a trust indenture by and between the district and a corporate trustee, which may be any trust company or bank having the powers of a trust company within or outside this state. The board may vest in the trustee the right to enforce any covenant made to secure or to pay the bonds.

61-08-23. Where money received from bond issue placed - Lien on money. All money received from any bond issue must be placed in a fund and applied solely for the purpose for which it was borrowed and for no other purpose except that the money may be temporarily invested in securities approved by the board. A lien is granted upon the money until so applied, in favor of the owners or holders of the bonds or in favor of the trustee appointed in connection with the bonds.

61-08-24. Board may appoint fiscal agent - Who may be. The board, in its discretion, may appoint a fiscal agent located in some city within or without this state. Every such fiscal agent shall be an incorporated bank or trust company authorized by the laws of the United States or of the state in which it is located to do a banking or trust company business.

61-08-25. Bonds and contracts payable from assessments of real property and from water charges. Bonds issued by any irrigation district, and the interest thereon, and contracts not payable in bonds, made and entered into by the district for the acquisition of irrigation works already constructed, or for the establishment and construction of irrigation works, or any part thereof, must be paid from the revenue obtained from special assessments upon the real property of the district or from any other revenue available for that purpose obtained from charges to water users or from the sale of water to any person, firm, corporation, limited liability company, municipality, or other irrigation district, or by a combination of special assessments and water charges.

61-08-26. County treasurer to be custodian of funds. The county treasurer shall act as the custodian of sinking funds, or funds created for the payment of bonds, except that in case an irrigation district is located in more than one county the board, by recorded resolution, shall designate the county treasurer who shall act as the custodian of the funds. Upon the adoption of the resolution, the county treasurer so designated shall act as the custodian. A copy of the resolution and a copy of each and every contract, trust agreement, or trust indenture relating to the issuance and payment of bonds must be filed with the county treasurer.

61-08-27. District treasurer to remit moneys to county treasurer - Crediting proper fund. The district treasurer shall remit to the county treasurer all moneys received by the treasurer in payment of assessments levied for sinking funds or for the payment of bonds. The district treasurer also shall remit to the county treasurer moneys raised from water rentals or water charges, when directed to do so by the board, and the district treasurer shall designate the fund or funds to which the moneys belong, except that all moneys, from whatever source derived, obligated under the terms of any contract, or agreement made and entered into by the district, to meet payments as they become due, shall be paid and remitted to the county treasurer and shall be credited by the county treasurer to the proper fund.

61-08-28. Payment of bonds and interest. The county treasurer shall pay the principal of, premium, if any, and interest on the bonds upon maturity, redemption, or purchase in the open market from any moneys in the fund created for the payment thereof. The county treasurer may disburse moneys in the fund to the fiscal agent or trustee appointed by the board for the purpose of paying the principal of, premium, if any, and interest on the bonds for which the fund was created, without any authorization from the board.

61-08-29. Claims paid by district treasurer - Insufficient funds - Verification of claims. No claim, other than payments of principal of, premium, if any, or interest on bonds, shall be paid by the district treasurer until the claim has been allowed by the board, and only upon warrants signed by the president and countersigned by the secretary. If the treasurer does not have sufficient money on hand to pay a warrant when it is presented for payment, the treasurer shall endorse thereon "Not paid for want of funds" and the date when so presented, over the treasurer's signature. All claims against the district must be certified the same as claims filed against a county. The board may require any claim to be verified. The secretary of the district may administer an oath to the person verifying a claim.

61-08-30. Board may withdraw funds from district and deposit with county treasurer - Duty of treasurer. The board may draw from time to time from the construction fund and deposit in the county treasury of the county where the office of the board is situated any sum in excess of the sum of twenty-five thousand dollars. The county treasurer shall receive and receipt for the same and place the same to the credit of the district, and the county treasurer shall be responsible upon the county treasurer's official bond for the safekeeping and disbursement of the same as provided in this chapter. The county treasurer shall pay out the same, or any part thereof, to the treasurer of the district only upon the order of the board, signed by the president, and attested by the secretary.

61-08-31. County treasurer to make report to board monthly. The county treasurer shall report in writing to the district on the second Monday in each month the amount of money belonging to the district in the county treasury, the amount of receipts for the month preceding, and the amount of the moneys paid out and assessments against each tract or parcel of land within the district which were paid in the preceding month. Such report shall be verified and filed with the secretary of the board.

61-08-32. District treasurer to make report to board - Verifying and filing. The district treasurer shall report to the board in writing as often as the board may require in its bylaws, the amount of money in the district treasury, the amount of receipts since the previous report, and the amount and items of expenditures. Such report shall be verified and filed with the secretary of the board.

61-08-33. District treasurer to keep warrant register - Contents - How warrants payable. Repealed by S.L. 1997, ch. 518, § 24.

61-08-34. Refunding irrigation district bonds - Negotiating new bonds. Each irrigation district in this state that has issued or shall issue bonds or improvement warrants purporting to have been issued for any purpose authorized by law, which bonds or improvement warrants have been sold and delivered to purchasers for value and constitute an existing indebtedness, may at any time after or before maturity refund the same and issue and sell refunding bonds in amounts, bearing interest at rates, and maturing on dates as determined by the board.

61-08-35. Procedure used in issuing refunding bonds. When in the judgment of the board of directors of an irrigation district it is in the best interests of the irrigation district to issue its bonds for the purpose of refunding or paying outstanding indebtedness as provided in section 61-08-34, refunding bonds may be issued pursuant to resolutions duly passed at a regular or special meeting of the board of directors. The refunding bonds may be sold at public or private sale and must be signed in the same manner as the bonds to be refunded or by the officers of the irrigation district as may be designated in the resolutions providing for their issuance.

61-08-36. Refunding bonds - When payable - Interest - Denominations - Interest coupons. Repealed by S.L. 1997, ch. 518, § 24.

61-08-37. Refunding bonds may be exchanged or sold. Repealed by S.L. 1997, ch. 518, § 24.

61-08-38. Amount of refunding bonds issued. Repealed by S.L. 1997, ch. 518, § 24.

61-08-39. Assessments - Proceeds - Levy. All assessments made by an irrigation district for the payment of the bonds or improvement warrants to be refunded must inure to the benefit of the holders of the refunding bonds and the proceeds of the assessments must be utilized for the purpose of paying the interest and principal of the refunding bonds, and the board of directors of the irrigation district shall levy an assessment against the lands of the district, as provided by law for levying assessments, sufficient to pay the interest on the refunding bonds and to create a sinking fund to retire the refunding bonds at maturity.

61-08-40. Provisions relating to payment of bonds applicable to refunding bonds. All provisions of law relating to the assessment in irrigation districts and the collection thereof for the purpose of raising funds for the payment of bonds of an irrigation district shall be applicable to bonds issued under the provisions of sections 61-08-34 through 61-08-39.

61-08-41. Issuance of revenue bonds. The acquisition, construction, reconstruction, improvement, betterment, or extension of any revenue-producing facility, and the issuance of revenue bonds in anticipation of the collection of the revenues of the facility, may be authorized by resolution adopted by the affirmative vote of a majority of the board of directors. The amount of the bonds authorized may not exceed the amount authorized by the electors of the district as provided in this chapter.

61-08-42. Payment and security for revenue bonds. Revenue bonds issued under this chapter may not be payable from nor charged upon any funds other than the revenue pledged to the payment of the bonds, nor is the district issuing the bonds subject to any pecuniary liability on the bonds. A holder of the bonds does not have the right to compel the levy of special assessments to pay the bonds or the interest, or to enforce payment of the bonds against any property of the district other than property pledged as security for the bonds. Each revenue bond issued under this chapter must recite in substance that the bond, including interest on the bond, is payable solely from the revenue pledged to the payment of the bond, and that the bond does not constitute a debt of the district within the meaning of any constitutional or statutory limitation.

CHAPTER 61-09 ASSESSMENTS IN IRRIGATION DISTRICTS

<u>Section</u>	<u>Page</u>
61-09-01 District assessor to examine tracts of land to fix annual assessments levied thereon	61-09: 1
61-09-02 District assessor to make list or prepare map to show apportionment of assessments - Filing	61-09: 1
61-09-03 Assessments spread in proportion to benefits received - Property subject to assessment for deficiency	61-09: 1
61-09-04 Assessment of property not in name of owner not to invalidate assessment	61-09: 1
61-09-05 Assessor to determine amounts payable to United States' agencies and other persons or districts	61-09: 1
61-09-06 When assessment roll completed - When board to equalize assessments	61-09: 1
61-09-07 Meeting of board for equalization - Duties - Secretary to be present to note changes	61-09: 2
61-09-08 Board to levy assessment against lands of district - Amount - How determined	61-09: 2
61-09-09 Board may levy assessment for general fund - Contents	61-09: 2
61-09-10 Secretary to enter sum assessed against each tract for each fund - Certifying to county auditor - Duty of auditor	61-09: 2
61-09-11 Assessments and taxes collected by county treasurer - Manner	61-09: 2
61-09-12 Refusal or failure of board to cause assessment to be made	61-09: 3
61-09-13 Board may borrow additional funds if levy of annual assessment is insufficient for district - Limitations	61-09: 3
61-09-14 Borrowing in excess of ninety percent of levy prohibited - Additional levy permissible - Transfer of balance in fund	61-09: 3
61-09-15 Assessment made to be general tax - When due and delinquent - Tax lien to be preferred lien	61-09: 3
61-09-16 Payment of assessments under protest - When refunding taxes or assessments	61-09: 4
61-09-17 Abatement of assessments - Exception	61-09: 4
61-09-18 Board may call special election to determine if special assessment shall be levied	61-09: 4
61-09-19 Special election - Notice - Ballots	61-09: 5
61-09-20 How rate of special assessment determined	61-09: 5

CHAPTER 61-09

ASSESSMENTS IN IRRIGATION DISTRICTS

61-09-01. District assessor to examine tracts of land to fix annual assessments levied thereon. Between the first Monday in March and the first Monday in June of each year, the district assessor shall examine each tract of land or legal subdivision of land in the district, including entered and unentered public lands of the United States, subject thereto under any act of Congress, and all other lands publicly or privately owned. In determining benefits, the district assessor shall first ascertain the number of irrigable acres [hectares] within each tract or subdivision, as determined by the board of directors, and this shall form the primary basis for determining the benefits accruing on account of the construction, acquisition, or operation of irrigation works. In addition, the district assessor shall include such factors as methods of irrigation, power consumption, water conservation, and whether or not irrigable acres [hectares] are actually being irrigated. Thereafter, the amount of benefits so apportioned or distributed to each tract of land as finally determined and equalized shall be and remain the basis for fixing the annual assessments levied during that year against such tracts or subdivisions in carrying out the provisions of this chapter.

61-09-02. District assessor to make list or prepare map to show apportionment of assessments - Filing. The assessor shall make, or cause to be made, a list showing the apportionment or distribution of assessments, and containing a description of each unit or tract of land assessed in the district, and the name of the record owner thereof, or the assessor may prepare a map on a convenient scale showing each unit or tract of land with the amount per acre [.40 hectare] apportioned thereto. Such units of land shall, wherever practicable, consist of governmental subdivisions of forty acres [16.19 hectares] or more. If all lands on such statement or map are assessed at the same amount or rate per acre [.40 hectare], a general statement to that effect shall be sufficient. A copy of such list or map shall be filed in the office of the county auditor of each county in which the district is situated, one copy shall be filed in the office of the state engineer, and one copy shall remain in the office of the board for public inspection.

61-09-03. Assessments spread in proportion to benefits received - Property subject to assessment for deficiency. Whenever any assessment is made within an irrigation district it shall be apportioned to and spread upon each unit or tract of land in the district in proportion to the benefits received, as determined by the assessor in accordance with section 61-09-01. Bonds, district improvement warrants, and other obligations incurred by the district shall be the obligations of the district. Only lands within the district benefited by irrigation and subject to assessment for irrigation benefits shall be subject to assessment for any fund created for the payment of bonds, district improvement warrants, and other district obligations. All assessments approved and levied by an irrigation district for any fund or purpose under the authority of this title shall be in the form of special assessments and shall be levied against both privately and publicly owned lands.

61-09-04. Assessment of property not in name of owner not to invalidate assessment. The assessment of any property in the name of a person not the owner thereof in no way shall invalidate the assessment of any unit or tract of land.

61-09-05. Assessor to determine amounts payable to United States' agencies and other persons or districts. The district assessor in assessing the property of the district shall determine and list the amount payable for each tract obligated by contract, if any, to the United States, any department or agency of the United States, to the state water commission, to any person, firm, corporation, or limited liability company, or to another irrigation district for the payment of water charges.

61-09-06. When assessment roll completed - When board to equalize assessments. On or before the fifteenth day of June in each year, the assessor shall complete the assessment roll and deliver it to the secretary of the district. The board of directors thereupon at its regular meeting in July shall proceed to equalize such assessments. At least ten days before the board meets, the secretary shall give notice of such meeting by publishing notice

thereof in the manner required for a regular election of the district. Until such meeting is held, the assessment roll shall remain in the office of the secretary for the inspection of all persons interested.

61-09-07. Meeting of board for equalization - Duties - Secretary to be present to note changes. The board shall meet as a board of equalization on the day specified in section 61-09-06 for the purpose of equalizing the assessments and shall continue in session from day to day as long as may be necessary but not to exceed ten days exclusive of Sundays. The board shall hear and determine such objections to the apportionment of benefits and assessments as may come before it and may make such changes in such apportionments as shall appear to be just and equitable. The secretary of the board shall be present during the sessions of the board and shall note changes made in the apportionment of benefits and assessments returned by the assessor and in the names of persons assessed. Within ten days after the close of the session the secretary of the board shall have the apportionment of benefits and assessments, as finally equalized by the board, extended into columns and added.

61-09-08. Board to levy assessment against lands of district - Amount - How determined. The board then shall levy an assessment against the lands of the district sufficient to:

1. Pay the interest on outstanding bonds and improvement warrants;
2. Create a sinking fund to retire outstanding bonds and improvement warrants at maturity; and
3. Pay any and all obligations of the district due, or to become due during the ensuing year, including payments due, or to become due, under any contract with the United States, or with any department or agency thereof, or under any contract with the state water commission, or with any person, firm, corporation, or limited liability company, or with another irrigation district.

In determining the total of such levy the board shall take into consideration revenue derived from sources other than that obtained from the assessment and taxation of district lands. The secretary of the board shall compute and enter in separate columns of the assessment record the respective sums in dollars and cents required for each purpose, and each purpose shall be denominated a fund.

61-09-09. Board may levy assessment for general fund - Contents. If the board finds it necessary it may levy an assessment for the expenses incurred in organizing the district, for the operation, maintenance, and repair of the irrigation works, for the payment of salaries of officers and employees, and for general expenses. Such assessment shall constitute the general fund.

61-09-10. Secretary to enter sum assessed against each tract for each fund - Certifying to county auditor - Duty of auditor. The secretary shall compute and enter the sum assessed against each tract for each purpose or fund and thereupon shall certify to the county auditor of the county in which each tract of land is situated the amount of such assessment for each purpose or fund levied upon each tract of land by the board. The county auditor shall enter the amount assessed for each fund in a separate column of the tax list of the auditor's county. All tax lists when delivered to the county treasurer shall show all assessments levied for each fund on each tract of land within the district.

61-09-11. Assessments and taxes collected by county treasurer - Manner. Assessments or taxes shall be collected by the county treasurer at the same time and in the same manner as other taxes are collected in the county, except that such county treasurer shall receive in payment to the general fund mentioned in this chapter, for the year in which the assessment is levied, warrants drawn against such general fund as the equivalent of lawful money of the United States, if such warrants do not exceed the amount of the general fund assessment which the person tendering the same owes. Such county treasurer also shall

receive in payment of any assessment for any bond fund, or any improvement warrant fund, past due interest coupons on such bonds or warrants, as the equivalent of so much money of the United States if such interest coupons do not exceed the amount which the person tendering the same owes such fund. All such assessments except for the payment of principal or interest of bonds or improvement warrants collected or received by the county treasurer shall be paid to the treasurer of such irrigation district upon an order signed by the chairman and secretary of the district, and all warrants received by the county treasurer in payment of assessments, as provided in this chapter, may be turned over, as so much money, to the district treasurer on such orders.

61-09-12. Refusal or failure of board to cause assessment to be made. In case the board shall refuse, fail, or neglect to cause an assessment or levy to be made for the principal and interest of outstanding bonds, or improvement warrants, and for all payments due, or to become due, in the ensuing year to the United States, or to any department or agency thereof, or to the state water commission, or to any person, firm, corporation, or limited liability company, or to another irrigation district, under any contract entered into by the district, or for expenses incurred in organizing the district, then the assessment of property made for the preceding year shall be adopted and shall be the basis of assessment for the district. The board of county commissioners of each county comprising the district, by resolution, shall make such levy and assessment in the same manner and with like effect as if the same had been made by the board of directors of the district, and the expense incident thereto also shall be levied and assessed against the district. All such taxes or assessments shall be collected by and paid to the county treasurer in the county treasurer's official capacity and the county treasurer shall be responsible for the safekeeping, disbursement, and payment thereof, as herein provided.

61-09-13. Board may borrow additional funds if levy of annual assessment is insufficient for district - Limitations. If after the levy of the annual assessment for the current year the board finds that because of some unusual or unforeseen cause funds raised through the collection of the assessment, and from other sources, will not be sufficient for the proper maintenance and operation of the district, and the irrigation works of the district, the board may borrow additional funds needed to an amount not to exceed twenty dollars per acre [.40 hectare] for the irrigable lands within the district and may pledge the credit of the district for the payment of the loan, or the board may issue bonds in anticipation of further collections. The board shall include in the levy for the ensuing year the amount required to pay the loan or to retire the bonds.

61-09-14. Borrowing in excess of ninety percent of levy prohibited - Additional levy permissible - Transfer of balance in fund. An irrigation district, on account of expenses of operation and maintenance and to pay the current expenses of the district, in any year may not borrow in excess of ninety percent of the levy of assessments for that year. In case of due and outstanding obligations of the district on account of current expenses and expenses of operation and maintenance contracted before the year in which the levy is made, the district board may make an additional levy, not to exceed twenty dollars per acre [.40 hectare], upon all irrigable lands within the district, to create a special fund for the payment of the past-due obligations. Whenever the claims or obligations against any fund for any year are fully paid, the board may transfer any unused balance to any fund for any preceding or succeeding year.

61-09-15. Assessment made to be general tax - When due and delinquent - Tax lien to be preferred lien. All assessments made pursuant to the provisions of this chapter on real property, and assessments on leasehold estates owned by this state or any of its subdivisions, and, to the extent provided by the act of Congress of August 11, 1916, assessments on entered or unentered public lands, shall be a general tax against the real property on which assessed in like manner and to the same effect as general state and county taxes and shall be of the same order. The lien thereof shall share ratably with general tax liens in all tax proceedings and tax lien foreclosures and shall be subject to all provisions of law relating to general taxes. Such assessment shall become due and payable and delinquent at the same time as other general state and county taxes lien foreclosure and shall remain subject to all statutory provisions applying to tax lien foreclosure. In case leasehold estates only are affected by said assessments the tax lien foreclosure notice shall state that fact. The lien for the bonds of any series shall be preferred to that of any subsequent series, and the lien for the payments due to the United States

under any contract between the district and the United States, accompanying which bonds have not been deposited with the United States, shall be a lien preferred over that of any issue of bonds or any series of any issue subsequent to the date of such contract. All funds arising from assessment and levy, if any, shall be devoted to the obligations of the district payable from said funds and as to all obligations from the bond and United States contract a fund shall be so devoted in the order of priority of the creation of the obligation. No error or omission which may be made in the proceedings of the board, or of any officer of an irrigation district in referring, reporting upon, ordering or otherwise acting concerning the establishment, construction, or acquisition of irrigation works, or concerning the issuance of bonds or improvement warrants, or in making or certifying any assessment shall vitiate or in any way affect any such assessment; but if it shall appear that by reason of such error or omission substantial injury has been done to the party or parties claiming to be aggrieved, the court shall alter such assessment as may be just and the same shall then be enforced. Whenever the validity of any assessment, or the validity of any deed given pursuant to a foreclosure of tax lien for such assessment shall be drawn in question in any action in any district court in this state, and such assessment shall be held to be invalid by reason of noncompliance with the laws of this state, the court shall determine the true and just amount which the property attempted to be so assessed by said assessment should pay, to make the same uniform with other assessments for the same purpose, and the amount of such assessments as the same appears on the assessment list thereof, shall be prima facie evidence of such true and just amount, and judgment must be rendered and given therefor against the property liable for such assessment, without regard to the proceedings had for the levy thereof, and such judgment shall be a lien upon the property upon which the assessment shall have been levied, of equal force and effect as the lien of irrigation district assessments, and the lien of such judgment shall be enforced by the court in such action.

61-09-16. Payment of assessments under protest - When refunding taxes or assessments. When any person against whose property assessments as provided in this chapter have been made shall pay the same under protest as provided by the general revenue laws of this state, the board may pass upon and make orders disposing of the moneys paid under protest in the same form and manner as the boards of county commissioners are authorized to act in the case of general taxes, and such proceedings shall be had as provided in title 57, so far as such provisions apply. No taxes or assessments shall be ordered refunded unless the person complaining shall file in the office of the secretary of such district a copy of the person's tax receipt, showing the same paid under protest, together with an affidavit in writing showing one of the following reasons why such taxes or assessments should be refunded:

1. That the land upon which such taxes or assessments were levied is not within the boundaries of the district for which the lands were taxed or assessed.
2. That the said lands are exempt by law, setting forth the reason therefor.
3. Repealed by S.L. 1957, ch. 380, § 1.

61-09-17. Abatement of assessments - Exception. The board of county commissioners, with the approval of the tax commissioner, may abate any assessments made by irrigation districts if application therefor is approved by the board of the irrigation district. In case such assessments are made for the purpose of meeting payments due to the United States or any department or agency thereof or to the state water commission, the application shall not be granted unless it also bears the approval of an authorized representative or agent of the United States or of such department or agency, or of the state water commission, as the case may be. In case bonds or improvement warrants are deposited with a trustee under a trust agreement or trust indenture, the consent of such trustee shall be obtained before abating any assessment for such bonds or improvement warrants. The application for the abatement may be made by the board of the irrigation district instead of by individual taxpayers and any number of tracts of land may be included in a single application.

61-09-18. Board may call special election to determine if special assessment shall be levied. The board at any time, when in its judgment advisable, may call a special election

and submit to the qualified electors of the district the question whether or not a special assessment shall be levied for the purpose of raising money to be applied for any authorized purpose.

61-09-19. Special election - Notice - Ballots. The election provided for in section 61-09-18 shall be called upon the notice prescribed, and shall be held and the result thereof determined and declared in all respects in conformity with the provisions relating to bond elections. The notice must specify the amount of money proposed to be raised, and the purpose for which it is intended to be raised, at such election. The ballot at such election shall be in substantially the following form:

Shall a special assessment in the amount of \$_____ (stating the amount) be levied?

Yes ☐

No ☐

If a majority of the votes cast are in favor of such assessment the board, at the time of the annual levy, shall levy an assessment sufficient to raise the amount voted.

61-09-20. How rate of special assessment determined. The rate of assessment determined by a special election as provided in section 61-09-18 shall be ascertained and apportioned in the manner as provided in this chapter, specifically sections 61-09-01 through 61-09-03, for all special assessments which an irrigation district has the authority to levy.

CHAPTER 61-10 **CHANGING BOUNDARIES OF IRRIGATION DISTRICTS**

<u>Section</u>	<u>Page</u>
61-10-01 Change of district boundaries - Effect	61-10: 1
61-10-02 Petition for inclusion of land in district - Contents of petition	61-10: 1
61-10-03 [Repealed]	61-10: 1
61-10-04 [Repealed]	61-10: 1
61-10-05 Payment of share of original cost by petitioners required	61-10: 1
61-10-06 [Repealed]	61-10: 1
61-10-07 [Repealed]	61-10: 1
61-10-08 [Repealed]	61-10: 1
61-10-09 [Repealed]	61-10: 1
61-10-10 [Repealed]	61-10: 1
61-10-11 [Repealed]	61-10: 1
61-10-12 Authority of guardians, personal representatives, and conservators on proposal to change boundaries of district	61-10: 2
61-10-13 [Repealed]	61-10: 2
61-10-14 [Repealed]	61-10: 2
61-10-15 [Repealed]	61-10: 2
61-10-16 [Repealed]	61-10: 2
61-10-17 [Repealed]	61-10: 2
61-10-18 [Repealed]	61-10: 2
61-10-19 [Repealed]	61-10: 2
61-10-20 [Repealed]	61-10: 2
61-10-21 [Repealed]	61-10: 2
61-10-22 Effect of change on office of director upon exclusion of lands - Vacancy - How filled	61-10: 2
61-10-23 [Repealed]	61-10: 2
61-10-24 [Repealed]	61-10: 2
61-10-25 Notice of filing of petition and hearing thereof - Cost of proceedings	61-10: 2
61-10-26 Hearing of petition - Assent of parties	61-10: 3
61-10-27 Board may include lands in district	61-10: 3
61-10-28 Electors may object to inclusion of lands - Board may call an election	61-10: 3
61-10-29 Ordering of election - Notice - Conduct	61-10: 3
61-10-30 Result of election - Duty of the board and secretary	61-10: 3
61-10-31 Redivision of district into divisions	61-10: 3
61-10-32 Petition for exclusion of land from irrigation district - Bond - Contents	61-10: 4
61-10-33 Notice of hearing of petition	61-10: 4
61-10-34 Board may grant or deny petition for exclusion of lands	61-10: 4
61-10-35 Outstanding bonds or improvement warrants or contractual obligations - Order excluding lands - Assent	61-10: 4

61-10-36	Election to determine exclusion of land - Notice of election - Form of ballot - Conduct of election.....	61-10: 4
61-10-37	Result of election - Order excluding lands.....	61-10: 5
61-10-38	Elimination of divisions of district.....	61-10: 5

CHAPTER 61-10

CHANGING BOUNDARIES OF IRRIGATION DISTRICTS

61-10-01. Change of district boundaries - Effect. The boundaries of any irrigation district may be changed and tracts of land not included within the district may be added to the district, or tracts of land included within the boundaries of such district may be excluded from the district, in the manner prescribed in this chapter, but neither such change of the boundaries of the district nor such exclusion of lands from the district shall impair or affect its organization, or its rights in or to property, or any of its rights or privileges. It shall not affect nor discharge any contract, obligation, lien, or charge for or upon which it was or might become liable or chargeable had such change of its boundaries not been made, or had no land been excluded from the district.

61-10-02. Petition for inclusion of land in district - Contents of petition. The holder or holders of title, or evidence of title, and the secretary of the interior of the United States for unentered or public land, representing one-half or more of any body of lands which can be served by the irrigation system, and which, taken together, constitute one tract of land, may file with the board of directors of such district a petition in writing praying that the boundaries of such district may be so changed as to include their lands. The petition shall describe the boundaries of the parcel or tract of land, and also shall describe the boundaries of the several parcels owned by the petitioners, if they are the owners of district parcels. Such description need not be more particular than may be required when such lands are entered by the township assessor in the assessment book. Such petition must contain the assent of the petitioners to the inclusion in said district of the parcels or tracts of land described in the petition, and of which the petition alleges that they respectively are the owners, and it must be acknowledged in the manner in which a conveyance of lands is required to be acknowledged.

61-10-03. Notice of petition to include land in district - Contents - Time required by notice - Cost. Repealed by S.L. 1959, ch. 410, § 15.

61-10-04. Hearing of petition on proposed change in boundaries - Assent of parties. Repealed by S.L. 1959, ch. 410, § 15.

61-10-05. Payment of share of original cost by petitioners required. The board to which a petition for the inclusion of lands into a district is presented may require, as a condition precedent to the granting of the same, that the petitioners severally shall pay to such district such respective amounts, as nearly as the same can be estimated, the several amounts to be determined by the board, as said petitioners or their grantors would have been required to pay to such district as assessments, had such lands been included in such district at the time the same originally was formed.

61-10-06. Power of board to reject or grant petition for inclusion of land - Survey required. Repealed by S.L. 1959, ch. 410, § 15.

61-10-07. Objections to change - Resolution adopting change - Contents of resolution. Repealed by S.L. 1959, ch. 410, § 15.

61-10-08. Ordering of election - Notice, contents - Ballots, contents. Repealed by S.L. 1959, ch. 410, § 15.

61-10-09. Result of election - Duty of board. Repealed by S.L. 1959, ch. 410, § 15.

61-10-10. Copy of order changing boundaries filed with recorder - Effect. Repealed by S.L. 1959, ch. 410, § 15.

61-10-11. Petition to be recorded by secretary - Evidence. Repealed by S.L. 1959, ch. 410, § 15.

61-10-12. Authority of guardians, personal representatives, and conservators on proposal to change boundaries of district. A guardian, conservator, or personal representative who is appointed as such under the laws of this state, and who is thereby entitled to the possession of the lands belonging to the estate which the person represents, on behalf of the person's ward or the estate which the person represents, or upon being authorized by the proper court, may sign and acknowledge the petition provided in this chapter, or the person may show cause, as mentioned in this chapter, why the boundaries of the district should not be changed.

61-10-13. When redivision of district into divisions - Directors elected from. Repealed by S.L. 1959, ch. 410, § 15.

61-10-14. Exclusion of land from district - Petition for - Contents - Description of lands in - Acknowledging. Repealed by S.L. 1959, ch. 410, § 15.

61-10-15. Notice of petition for exclusion of lands - Contents - Publishing or posting - Time specified in notice. Repealed by S.L. 1959, ch. 410, § 15.

61-10-16. Hearing petition and objections thereto - Assent of parties. Repealed by S.L. 1983, ch. 680, § 58.

61-10-17. Power of board to deny or grant petition for exclusion of lands. Repealed by S.L. 1959, ch. 410, § 15.

61-10-18. Bonds or improvement warrants outstanding - Resolution excluding from district - Assent to - Acknowledgment. Repealed by S.L. 1959, ch. 410, § 15.

61-10-19. Election ordered to determine exclusion of lands - Publishing and posting - Form of ballots - Conducting. Repealed by S.L. 1959, ch. 410, § 15.

61-10-20. Result of election - Survey ordered by board. Repealed by S.L. 1959, ch. 410, § 15.

61-10-21. Filing copy of orders - Effect. Repealed by S.L. 1959, ch. 410, § 15.

61-10-22. Effect of change on office of director upon exclusion of lands - Vacancy - How filled. If the lands excluded from any district shall embrace the greater portion of any division of such district, the office of director for such division shall be vacant at the expiration of ten days from the final order of the board excluding the lands. Such vacancy shall be filled by appointment by the other directors of the district. A director thus appointed shall hold office for the balance of the term in which the vacancy occurs.

61-10-23. Redivision of district. Repealed by S.L. 1959, ch. 410, § 15.

61-10-24. Refunding assessments to owners of lands excluded. Repealed by S.L. 1957, ch. 380, § 2.

61-10-25. Notice of filing of petition and hearing thereof - Cost of proceedings. The secretary of the board of directors shall cause notice of the filing of a petition for the inclusion of land in an irrigation district to be published in the manner provided for a regular election of the district. The notice shall state the name or names of petitioners, a description of lands mentioned in the petition, and the prayer of the petition. It shall notify all persons affected by the proposed inclusion of lands in the district, to appear at the time and place specified in the notice and to show cause, in writing or in person, if any they have, why the lands described in the petition, or any part thereof, should not be included in the irrigation district. The board may require the petitioners to advance to the secretary of the district sufficient money to pay the estimated cost incurred in the proceedings of the proposed inclusion of land.

61-10-26. Hearing of petition - Assent of parties. The board of directors of the district, at the time and place mentioned in the notice of hearing on the petition, or at such time to which the hearing of the petition may be adjourned, shall proceed to hear such petition and shall receive and consider all objections presented by any elector in the district or other affected person to the inclusion therein of lands described in the petition or any part thereof. The secretary of the board shall take note of all objections and include the same in the minutes of the meeting. The failure of any elector in the district to appear and object at the hearing, or to file with the board the elector's objection in writing before or at the hearing, shall be deemed to be an assent on the elector's part to the inclusion of such lands.

61-10-27. Board may include lands in district. If the board of directors deems it not for the best interest of the district that a change in its boundaries be made so as to include the lands mentioned in the petition, or any part thereof, it shall reject the petition. If it deems it for the best interest of the district, the board shall grant the petition in whole or in part and by resolution direct the chairman and the secretary of the board to issue its order including all or any part of the lands mentioned in the petition in the district, unless electors who together own at least ten percent of the whole number of acres [hectares] in the district subject to assessment for irrigation costs object in writing at or before the time of hearing to the inclusion of such lands. When lands are included in a district, the order of the board of directors allowing inclusion shall be filed with the state engineer and with the county auditor of each county in which such lands are situated and shall be filed and recorded in the office of the recorder of each such county.

61-10-28. Electors may object to inclusion of lands - Board may call an election. If electors who together own or hold ten percent or more of the whole number of acres [hectares] in the district, subject to assessments for irrigation costs, at the hearing on the petition, object in writing to the inclusion of the lands therein mentioned, the board shall, by resolution, order an election to submit to the electors of the district the question whether or not the lands mentioned in the petition or any part thereof shall be included.

61-10-29. Ordering of election - Notice - Conduct. The board shall fix the time when such election shall be held. Notice of such election, describing the lands proposed for inclusion in the district, shall be given in the manner provided for a regular election of the district. Such election shall be held and conducted, the ballots counted, and the results of the election determined and declared in the same manner as a regular election of the district. The ballots at such election shall contain substantially the following words: "For inclusion of lands in the district" and the words "against inclusion of lands in the district". In case a contract obligating the district has been entered into between the district and the United States, or with any department or agency thereof, or with the state, or any department or political division thereof, no change shall be made in the area embraced within the district unless a duly authorized agent of the holder of any such contract has consented thereto in writing and until such consent has been filed with the board of directors.

61-10-30. Result of election - Duty of the board and secretary. If a majority of the votes cast at the election shall be against the inclusion of the land described in the resolution of the board of directors, the board shall deny the petition and shall proceed no further in the matter. If, however, a majority of the votes cast at the election shall be in favor of including such lands in the district, the board shall issue its order setting forth the filing of the petition, the action of the board thereon, the result of the election, and shall order such lands added to the district. The order shall describe the lands to be included in the district. A certified copy of the order of the board shall be filed with the state engineer and the county auditor of each county in which the included lands lie. A certified copy of such order shall also be filed and recorded in the office of the recorder in each such county.

61-10-31. Redivision of district into divisions. When lands are included in an irrigation district by means of the procedure described in this chapter, and if the district will contain after inclusion of the lands twenty thousand irrigable acres [8093.72 irrigable hectares] or more, at least thirty days before the next general election, the board shall make an order dividing or redividing the district into divisions in conformity with section 61-05-13. The divisions must be

as nearly equal in size as may be practicable and they must be numbered, with one director thereafter elected by and from each division.

61-10-32. Petition for exclusion of land from irrigation district - Bond - Contents.

The owner or owners of a tract or tracts of land in an irrigation district may file with the board of directors of the district a petition requesting that such tract or tracts of land be excluded from the district. The petition shall be accompanied by a sufficient bond conditioned that the petitioner or petitioners will pay all costs incurred by the board in connection with the proceeding resulting from the filing of such petition. The petition must describe each tract of land sought to be excluded from the district. The petition shall be recorded in the minutes of the board. The filing of a petition with the board requesting the exclusion of lands from the district is deemed an assent by each petitioner to the exclusion from the district of the lands described in the petition, or any part thereof. Any unit or tract of land mentioned in the petition which does not include within its boundaries acreage [hectarage] susceptible of irrigation by the irrigation works of the district may not be assessed or taxed by the district and may be excluded therefrom.

61-10-33. Notice of hearing of petition. The secretary of the board of directors shall cause notice of the filing and hearing of a petition for exclusion of lands from an irrigation district to be published in the manner provided for a regular election of the district. The notice shall state (1) the names of petitioners, (2) the description of each tract of land mentioned in the petition, and (3) the prayer of the petition. The notice shall notify all persons affected by the proposed exclusion of lands from the district, to appear at the time and place specified therein and show cause in writing or in person, if any they have, why the lands described in the petition should not be excluded. If a petition requesting the exclusion of lands does not describe any lands which are susceptible of irrigation by the irrigation works of the district, the board may exclude the lands from the district without notice or hearing.

61-10-34. Board may grant or deny petition for exclusion of lands. If after the hearing and after considering objections, if any, to exclusion of the lands or parts thereof mentioned in the petition, the board deems it not for the best interest of the district to exclude the lands mentioned in the petition or any part thereof, it shall deny the petition. If, however, the board shall deem it for the best interests of the district to exclude such lands, or any part thereof, from the district, it shall grant the petition and by resolution direct the chairman and secretary of the board to issue an order excluding such lands from the district, unless the district has outstanding bonds or improvement warrants or unless a contract obligating the district has been entered into with the United States or any department or agency thereof or with the state or any department or political subdivision thereof.

61-10-35. Outstanding bonds or improvement warrants or contractual obligations - Order excluding lands - Assent. If the holders of outstanding bonds or improvement warrants, or of contracts obligating the district, consent in writing to exclusion of lands mentioned in the petition, the board of directors may by resolution direct the chairman and the secretary of the board to execute its order excluding such lands from the district. The assent in writing of holders of district bonds or improvement warrants, or of anyone interested in a contract obligating the district, shall be filed with the secretary of the district and shall be copied in the minutes of the board, and such minutes or a certified copy thereof, shall be admissible in evidence with the same effect as the written assent. If such assent is not given, the board shall deny and dismiss the petition. When lands are excluded from the district, a certified copy of the order of the board shall be filed in the offices of the state engineer and the county auditor of each county in which the excluded lands are situated and filed and recorded in the office of the recorder of each such county.

61-10-36. Election to determine exclusion of land - Notice of election - Form of ballot - Conduct of election. If electors who together own at least ten percent of the whole number of irrigable acres [hectares] in the district object in writing to the exclusion of such land, the board shall by resolution order an election to submit to the electors of the district the question whether or not the lands mentioned in the petition, or any part thereof, shall be excluded. Notice of such election, describing the lands proposed for exclusion from the district, shall be given in

the manner provided for a regular election of the district. The ballot at such election shall be substantially in the following form:

Shall the tracts of land described in the notice of this election be excluded from the irrigation district?

Yes (for exclusion of lands)	<input type="checkbox"/>
No (against exclusion of lands)	<input type="checkbox"/>

The election shall be conducted substantially as a general election of an irrigation district is conducted.

61-10-37. Result of election - Order excluding lands. If at an election for exclusion of lands from an irrigation district, a majority of the votes cast shall be against exclusion, the board shall dismiss the petition and proceed no further in the matter, but if a majority of such votes shall be in favor of excluding such lands from the district, the board shall issue its order setting forth the filing of the petition, the action of the board thereon, the result of the election, and shall order such lands excluded from the district. A certified copy of such order shall be filed in the offices of the state engineer and the county auditor of each county in which the excluded lands lie and shall be filed and recorded in the office of the recorder of each such county.

61-10-38. Elimination of divisions of district. When lands are excluded from an irrigation district by means of the procedure described in this chapter, and if the district will contain less than twenty thousand irrigable acres [8093.72 irrigable hectares] after the exclusion of the lands, the board of directors shall issue an order eliminating district divisions in conformity with section 61-05-13.

CHAPTER 61-11 DISSOLUTION OF IRRIGATION DISTRICTS

<u>Section</u>	<u>Page</u>
61-11-01	Petition to board of directors for dissolution of district - Requirements - Adoption of resolution calling special election 61-11: 1
61-11-02	Notice of election for dissolution of district - Publication..... 61-11: 1
61-11-03	Ballots to be provided - Form 61-11: 1
61-11-04	Conduct of election - Canvassing and reporting result of election.... 61-11: 1
61-11-05	Procedure when election favors dissolution - Notice to file claims against district - What claims barred..... 61-11: 1
61-11-06	Vote against dissolution of district - Subsequent election for dissolution not to be held for one year 61-11: 2
61-11-07	Resolution of dissolution when election favors dissolution – Officers and board to act until obligations settled 61-11: 2
61-11-08	Sale of district property authorized - Appraisers appointed - Oath - Compensation 61-11: 2
61-11-09	Appraisal of property by appraisers - Report to board – Advertising property for sale - Opening of bids 61-11: 2
61-11-10	Private sale of property of district - When permitted - Terms - Proceeds of sale 61-11: 2
61-11-11	Sale or transfer of property authorized 61-11: 2
61-11-12	Liquidation of district indebtedness 61-11: 2
61-11-13	Sale does not affect vested water rights 61-11: 3
61-11-14	Sale does not affect or release assessment liens - Duty of county treasurer 61-11: 3
61-11-15	Report of dissolution when - Where filed - Contents - Recording of in office of recorder 61-11: 3
61-11-16	Surplus moneys of district - Disposal 61-11: 3

CHAPTER 61-11

DISSOLUTION OF IRRIGATION DISTRICTS

61-11-01. Petition to board of directors for dissolution of district - Requirements - Adoption of resolution calling special election. Whenever the electors of an irrigation district owning a majority of the number of acres [hectares] of irrigable land therein shall petition the board to submit to the electors of the district at a special election, or at the next regular election of the district, the question of the dissolution or discontinuance of such irrigation district, and the sale of its property, the board, if the district has no outstanding or unpaid bonds or district improvement warrants, or if the holders of district bonds or district improvement warrants consent thereto in writing, shall adopt a resolution calling a special election or providing for the submission of such question to the electors at the next regular district election.

61-11-02. Notice of election for dissolution of district - Publication. Notice that the question of the dissolution of the district and the sale of the district property as provided in section 61-11-01 will be submitted to the vote of the electors at a special election or at the next general district election, as the case may be, shall be given in the manner provided for a regular election of the district.

61-11-03. Ballots to be provided - Form. The board shall provide printed, typewritten, or mimeographed ballots for an election held pursuant to the provisions of this chapter. Such ballots shall be substantially in the following form:

The irrigation district of _____ County, North Dakota, shall be dissolved and its property sold:

Yes ☐
No ☐

The board shall cause such ballots to be prepared at least fifteen days before the election and shall place the ballots in the hands of the election officers of the district prior to the opening of the polls on the day of such election.

61-11-04. Conduct of election - Canvassing and reporting result of election. An election on the question of dissolution in all respects shall be conducted, and the votes therefrom canvassed, in the same manner as provided for a regular election of the district. A certified copy of the statement of the election result by the district's board of directors and all ballots, lists, tally sheets, and other documents pertaining to the election shall be forwarded to the state engineer by registered or certified mail or express.

61-11-05. Procedure when election favors dissolution - Notice to file claims against district - What claims barred. If a majority of the votes cast at the election are in favor of dissolving the district, the board shall cause to be published in the newspaper or newspapers of general circulation where the district is located, and in the official newspaper of each county in which the district is located, a notice to the creditors of the district, except holders of district bonds or district improvement warrants, requiring any person having a claim against the district to submit and file such claim with the secretary of the board within one year after the first publication of the notice, at the place specified in such notice. The notice shall be published as many times as the board shall direct, but not less than once each week for three consecutive weeks. The secretary of the district shall mail, or cause to be mailed, by registered or certified mail, a copy of such notice to each creditor, except any holder of district bonds or district improvement warrants, known to the secretary or of record in the secretary's office. After such notice is given, a copy thereof with the affidavit of publication and affidavit of mailing shall be filed in the office of the secretary of the district. Any claim not thus presented, except any claim of a holder of district bonds or warrants, shall be barred forever against such district and against all officers thereof or property therein. None of the provisions of this chapter shall be construed to limit or impair the rights of owners or holders of district bonds or district improvement warrants.

61-11-06. Vote against dissolution of district - Subsequent election for dissolution not to be held for one year. If a majority of the votes cast at the election are against dissolving the district and selling the property thereof, no subsequent election upon the question of dissolution of the district shall be held until after the expiration of at least one year.

61-11-07. Resolution of dissolution when election favors dissolution - Officers and board to act until obligations settled. If a majority of the votes cast at the election are in favor of dissolving the district, the board, in its resolution declaring the result of the election, shall declare that the district will be dissolved when the obligations of the district have been paid fully. The board and other officers of the district shall continue to act and function until the property and assets of the district have been disposed of in conformity with the provisions of this chapter and until all obligations of the district have been settled and paid.

61-11-08. Sale of district property authorized - Appraisers appointed - Oath - Compensation. If a majority of the votes cast at an election for dissolution of a district favor dissolution and sale, the irrigation works, franchises, and other property of the district may be sold at not less than a valuation to be determined by a board of three appraisers. One member of such board of appraisers shall be appointed by the board of directors of the district, one shall be appointed by the state engineer, and the two appraisers thus selected shall choose the third appraiser. The board of appraisers shall be sworn by an officer who is authorized to administer oaths and who has an official seal. Such board shall appraise the irrigation works, franchises, and all other property of the district at its cash value, and to determine such value, with the consent of the board of directors of the district, may employ engineers, accountants, and such expert assistance as may be necessary. The compensation of such appraisers, engineers, accountants, and others shall be fixed by the board of directors.

61-11-09. Appraisal of property by appraisers - Report to board - Advertising property for sale - Opening of bids. The board of appraisers shall appraise all of the property of the district and shall make a report of its appraisement to the board of directors. A copy of such report shall be filed by the secretary of the district with the state engineer. The board of directors shall advertise for sale all of the property of the district and shall publish a notice once each week for two consecutive weeks specifying that sealed bids will be received, opened, and considered by the board at the time and place specified in such notice, and setting forth a description of the property. At the time and place designated in such notice, or as soon thereafter as the board can meet, it shall open and consider all bids received for the purchase of the property, and it may reject any and all bids which do not, in the judgment of the board, offer a fair and just consideration.

61-11-10. Private sale of property of district - When permitted - Terms - Proceeds of sale. If all bids are rejected, the board, by private negotiation, may sell and convey the property or any part thereof for cash at not less than the appraised value thereof, or may agree to sell and convey the property at not less than the appraised value for part cash and part in deferred payments bearing interest at such rate as shall be agreed to mutually between the board and the purchaser. The title to any property so sold shall remain in the district until the purchase price thereof has been fully paid. All moneys realized from the sale of the property shall be deposited with the county treasurer designated as the custodian of district funds, and such moneys shall be paid out only upon warrants duly authorized by the board and signed by the chairman and secretary thereof.

61-11-11. Sale or transfer of property authorized. In carrying out the provisions of this chapter, for the discontinuance of an irrigation district and the sale of its property and assets, the board may sell, transfer, and convey all of the irrigation works, franchises, and other property owned by the district to the purchaser thereof.

61-11-12. Liquidation of district indebtedness. After the sale of the property and franchises of an irrigation district, the board, with the moneys realized from such sale together with such other funds as such district may have, shall make settlement, payment, and redemption of all outstanding bonded or other indebtedness of the district, but in no case shall such board pay more than the par value of outstanding bonds or warrants, as the case may be,

with interest up to the time of payment. If the amount realized from the sale of such district property, together with other moneys of the district, shall be insufficient for the payment of all the indebtedness of the district, such district shall not be dissolved or discontinued until such indebtedness is fully paid, and assessments shall continue to be made against the lands in the district in the manner provided by law for the levy of assessments to pay bonds and other indebtedness of irrigation districts until a sufficient amount is raised to pay in full all obligations of such district.

61-11-13. Sale does not affect vested water rights. The sale of the irrigation works, franchises, and property of an irrigation district shall not affect or impair vested water rights, and the right to the use of water acquired under the laws of this state shall be assigned to the purchaser of the irrigation works of the district or to the individual electors of the district in accordance with section 61-04-15. Chapter 61-04 governs all water permits and water rights acquired by an irrigation district, including any water permits or water rights which may be assigned by an irrigation district.

61-11-14. Sale does not affect or release assessment liens - Duty of county treasurer. The sale of the property and franchises of an irrigation district shall not affect or release the lien of any assessment made by the district upon the lands therein, and such lien shall not be removed until such assessment is paid or the property sold for the payment thereof. The county treasurer shall collect any such assessment in the manner provided by law for the collection of the assessments of an irrigation district, and the laws of the state for the collection and sale of land for taxes shall continue to be applicable to the collection of any such assessments.

61-11-15. Report of dissolution when - Where filed - Contents - Recording of in office of recorder. After all the property of an irrigation district shall have been disposed of upon dissolution and all the obligations thereof shall have been paid, the directors of such district shall file in the office of the county auditor of each county in which such district is situated, and in the office of the state engineer, a report signed by the chairman of the board and attested by the secretary, and bearing the seal of the district, stating that the district has disposed of its property and franchises, that all of the obligations of the district have been fully paid, and that the district has been disorganized and dissolved. Such report shall be recorded in the miscellaneous records of the recorder in each of the counties in which the district is located, and from and after such filing and recording, such irrigation district shall be deemed to be dissolved.

61-11-16. Surplus moneys of district - Disposal. If a disorganized irrigation district shall have moneys in its treasury after the payment of all the debts and obligations of the district, such moneys shall be apportioned and paid to each landowner, who has paid fully all assessments against that landowner's land in the proportion which the last assessment of such owner's land bears to the total of all assessments last made, levied, and assessed against all lands in the district.

CHAPTER 61-12 FLOOD IRRIGATION PROJECTS

<u>Section</u>	<u>Page</u>
61-12-01	When improvements may be constructed 61-12: 1
61-12-02	Board of flood irrigation - How appointed - Filling vacancies - Office..... 61-12: 1
61-12-03	Oath - Bond - Members of flood irrigation board 61-12: 1
61-12-04	Organization of board of flood irrigation..... 61-12: 1
61-12-05	Legal adviser of board of flood irrigation..... 61-12: 1
61-12-06	Dam construction - Petition accompanied by map..... 61-12: 1
61-12-07	Examination of damsite by board of flood irrigation - Appointment of engineer 61-12: 2
61-12-08	Bond of petitioners - When required 61-12: 2
61-12-09	Examinations and surveys - Authority to enter lands 61-12: 2
61-12-10	Reports and plans of engineer - Copies filed with county auditor 61-12: 2
61-12-11	Location of improvement - Variance from petition 61-12: 2
61-12-12	Time for hearing fixed - Notice 61-12: 2
61-12-13	Contents of notice..... 61-12: 2
61-12-14	Evidence - Petition to discontinue proceedings 61-12: 2
61-12-15	Showing required to establish project..... 61-12: 2
61-12-16	Assessment of damages - How made 61-12: 3
61-12-17	Review of assessment - Ten-day notice - Place of hearing 61-12: 3
61-12-18	Petition for review of assessments 61-12: 3
61-12-19	Issue placed on court calendar - Judgment - Costs..... 61-12: 3
61-12-20	Rights of way 61-12: 3
61-12-21	Damages - How paid 61-12: 3
61-12-22	Assessment of accruing benefits..... 61-12: 3
61-12-23	Assessment of benefits subject to review..... 61-12: 4
61-12-24	Return of assessment of benefits 61-12: 4
61-12-25	Notice of construction - Letting of contracts..... 61-12: 4
61-12-26	Computation of costs - Contents 61-12: 4
61-12-27	Apportionment and enforcement of taxes 61-12: 4
61-12-28	Collection of flood irrigation taxes - Payment of expenses 61-12: 4
61-12-29	Additional assessments - When necessary 61-12: 5
61-12-30	Board of flood irrigation may contract for purchase of water - Assessment for maintenance..... 61-12: 5
61-12-31	Joint powers of flood irrigation boards in two or more counties - Apportionment of cost 61-12: 5
61-12-32	Tax or assessment not void 61-12: 6
61-12-33	New proceedings - When 61-12: 6
61-12-34	Liability of members of flood irrigation board 61-12: 6
61-12-35	Compensation of members of the board 61-12: 6
61-12-36	Power of board of flood irrigation to administer oath 61-12: 6
61-12-37	Bonds - Issuance - Payment 61-12: 6

61-12-38	Interest rate of bonds.....	61-12: 7
61-12-39	Payment of entire assessment by landowner.....	61-12: 7
61-12-40	Notice of issue of bonds - Given by county auditor.....	61-12: 7
61-12-41	Sinking fund.....	61-12: 7
61-12-42	Bonds issued on amortization plan.....	61-12: 7
61-12-43	Regulations concerning issuance of bonds under this chapter.....	61-12: 7
61-12-44	Levy of tax for interest - Separate sinking funds - County not liable for bonds.....	61-12: 8
61-12-45	Assessment of omitted property - Additional assessments.....	61-12: 8
61-12-46	State engineer to assist county board of flood irrigation.....	61-12: 8
61-12-47	Assessment for drainage.....	61-12: 8
61-12-48	Transfer of sinking fund to maintenance fund - Duty of county treasurer.....	61-12: 8

CHAPTER 61-12 FLOOD IRRIGATION PROJECTS

61-12-01. When improvements may be constructed. Dams, gates, and necessary ditches and canals for the purpose of controlling, regulating, and forcing the overflow of water in nonnavigable rivers or streams within this state may be established, constructed, and maintained in the several counties of the state under the provisions of this chapter whenever the same shall be conducive to the public health, convenience, or welfare.

61-12-02. Board of flood irrigation - How appointed - Filling vacancies - Office. The board of county commissioners of any organized county in this state, at any meeting of the board, by a majority vote of all the members, upon its own motion or on the petition of any person or persons interested, may appoint five property owners whose property lies within a flood irrigation project as a board of flood irrigation of the county. If the board of county commissioners appoints a board of flood irrigation it must appoint a board for each flood irrigation project in the county. One member of the board must be appointed for a term of one year, one for a term of two years, one for a term of three years, one for a term of four years, and one for a term of five years. Subsequent appointments must be made for terms of five years. All persons so appointed hold office until their successors are appointed and qualified. In case of a vacancy the board of county commissioners may fill the vacancy for the unexpired term by appointment. The board of county commissioners shall provide an office for the board of flood irrigation at the county seat suitable for its use and the keeping of its records and shall provide suitable record books for its use.

61-12-03. Oath - Bond - Members of flood irrigation board. Any person appointed as a member of the board of flood irrigation, within ten days after appointment, shall take, subscribe, and file in the office of the county auditor an oath to perform the duties of the office faithfully, and within the same time shall make, execute, and file in the auditor's office a bond payable to the county, with sureties to be approved by the auditor, in such sum as shall be ordered by the board of county commissioners, conditioned for the faithful discharge of the member's duties as a member of the board of flood irrigation.

61-12-04. Organization of board of flood irrigation. The members of the board of flood irrigation shall organize by electing from their number a chairman and a secretary. The board shall keep an office at the county seat and shall keep a record of its acts and proceedings and a separate record of the proceedings relating to each separate flood irrigation project, all of which shall be open for public inspection. Such records shall have the same force and effect as other public records. Three members of said board shall constitute a quorum for the transaction of business. Said board, when it is necessary, may employ a clerk and fix the clerk's compensation. It also may employ a competent surveyor or engineer.

61-12-05. Legal adviser of board of flood irrigation. The state's attorney of each county, as far as the state's attorney's other duties will permit, shall act as the legal adviser of the board of irrigation control. The board, however, by and with the consent of the board of county commissioners, may employ other counsel to advise and represent it in its proceedings.

61-12-06. Dam construction - Petition accompanied by map. A petition for the construction of a dam or a system of dams, including gates and other proper and necessary structures incidental thereto, may be made in writing to the board of flood irrigation. Such petition shall be signed by at least six freeholders of the district to be affected by the flood irrigation project and shall set forth and particularly describe the boundaries of the district which will be affected. The petitioners must accompany the petition with a map of such proposed district. Such map shall show the approximate location of the proposed dam or dams and other necessary works by means of which it is intended to control the waters of a river or stream. Said petition also shall describe in a general way the benefits expected to be derived from the establishment of such improvement.

61-12-07. Examination of damsite by board of flood irrigation - Appointment of engineer. Upon the presentation of a petition, as provided for in section 61-12-06 and the filing of the same, the board of flood irrigation, as soon as practicable, shall proceed to examine the site of the proposed improvement and the territory or district to be benefited thereby. If, in its opinion, it is necessary for the public good, it shall adopt a resolution to that effect and a further resolution designating a competent engineer who shall make all necessary and proper surveys of the lands that may be benefited or injured by the establishment of such improvement and who shall prepare all proper and necessary plans and specifications for the improvement required to be constructed. Upon the completion of such plans and specifications, such engineer shall file the same with the said board of flood irrigation, together with an estimate of the cost of the construction of the proposed improvement as well as of the annual maintenance thereof.

61-12-08. Bond of petitioners - When required. The board of flood irrigation shall require a bond from the petitioners in a sum sufficient to pay all expenses of the required surveys and plans and specifications and of the flood irrigation board, if it should appear, after the engineer's report is filed, that the proposed improvement would cost more than the amount of the benefits to be derived therefrom.

61-12-09. Examinations and surveys - Authority to enter lands. For the purpose of making examinations or surveys or getting the necessary information for the preparation of plans and specifications, the board of flood irrigation, its engineers or employees, may enter upon any lands deemed proper and necessary.

61-12-10. Reports and plans of engineer - Copies filed with county auditor. Copies of the report and of the plans and specifications of the engineer shall be filed in the office of the county auditor in the county in which the improvement is proposed to be constructed, with the board of flood irrigation, and in such other places as the board of flood irrigation may order, all of which shall be open to inspection.

61-12-11. Location of improvement - Variance from petition. In locating an improvement, the board of flood irrigation, under the advice of the engineer, may vary from the location described in the petition, as may be deemed advisable.

61-12-12. Time for hearing fixed - Notice. Upon the filing of the engineer's report the board of flood irrigation shall fix a date and public place for hearing objections to the petition, and the place of such hearing shall be some point in the vicinity of the proposed improvement, convenient and accessible for the majority of the landowners affected. At least ten days' notice of such hearing shall be given by publishing such notice once each week for two successive weeks in the official newspaper in each county in which the proposed project, or any part thereof, is located, if any is published therein, and if none is printed in the county then in the official newspaper printed in an adjoining county in the state. The hearing shall be held at least ten days after the last publication.

61-12-13. Contents of notice. Notices of the hearing shall set out briefly the substance of the petition, the date of the filing of the engineer's report, and the date when the board will act upon the petition, and must be signed by the members of the board, or a majority thereof.

61-12-14. Evidence - Petition to discontinue proceedings. All persons whose land may be affected by any irrigation project provided for in this chapter may appear before the board of flood irrigation and fully express their opinion and offer evidence upon the matters pertaining thereto. Should two-thirds of the landowners whose land is subject to assessment for the construction of such project and who own at least one-half of such land petition the board of flood irrigation to have further proceedings discontinued, said board, by resolution, shall order all further proceedings in connection therewith discontinued.

61-12-15. Showing required to establish project. If upon the examination by the board of flood irrigation, and after the filing with said board of the plans and specifications for any project, or if upon the hearing upon the petition, it shall appear that there was not sufficient cause for making such petition, or that the cost of the proposed project would be more than the amount

of the benefits derived therefrom, the board of flood irrigation shall deny the petition, and the petitioners shall be jointly and severally liable to such board for all costs and expenses incurred in the proceedings, to be recovered by such board by action. If it shall appear that there was sufficient cause for the making of such petition and that the proposed project will not cost more than the amount of the benefits to be derived therefrom, the board of flood irrigation shall make an order establishing the project, accurately describing it, and giving the same a name under which it shall be recorded and indexed.

61-12-16. Assessment of damages - How made. At the hearing provided for in section 61-12-12, the board of flood irrigation also shall determine what damage will be suffered, if any, by the owners of all lands within the district that will be affected by the building of such irrigation project. In determining such damages, no allowances shall be made for any benefits that may accrue to said land by the building of said project. The benefits, if any, shall be assessed under the provisions of section 61-12-22. The assessment of such damages shall be subject to review.

61-12-17. Review of assessment - Ten-day notice - Place of hearing. Ten days' notice of the time when and the place where an assessment of damages will be reviewed by the board of flood irrigation shall be given by publication in the official newspaper in each county in which the proposed project, or any part thereof, is located, if any is published therein, and if none is printed in the county, then in the official newspaper printed in an adjoining county in the state. The place appointed for such hearing shall be in the vicinity of the proposed improvement convenient and accessible for the majority of the landowners affected. At the time and place appointed, such board shall proceed to hear all complaints or objections relative to such assessment of damages and correct or confirm the same.

61-12-18. Petition for review of assessments. Should any landowner believe that the assessment of the damages suffered has not been made fairly or equitably the landowner may appeal to the district court of the county in which the land is situated, by filing a petition with the clerk of the district court of the county, asking for a review of such assessment of damages. The appeal must be taken in accordance with the procedure provided in section 28-34-01.

61-12-19. Issue placed on court calendar - Judgment - Costs. Upon the filing of a petition for the review of assessments in the office of the clerk of the district court of the county in which the land is situated, the clerk immediately shall notify the board of flood irrigation thereof. If it appears to the court upon the hearing that the assessments have not been made equitably, it may proceed to correct the same. The correction and adjustment is final, unless an appeal is taken to the supreme court.

61-12-20. Rights of way. The rights of way for the construction of any improvements required in an irrigation project, including all sites for dams, gates, and necessary ditches and canals, if not conveyed to the county by the owner, may be acquired by the board of flood irrigation by the exercise of the right of eminent domain in the manner prescribed by title 32. Any such right of way, when acquired, shall be the property of the county.

61-12-21. Damages - How paid. Upon the assessment by the board or court of the amount of damages to which the respective owners of land which may be damaged by the construction of a flood irrigation project may be entitled, and upon the assessment by the board or court of the amount of damages to which the respective owners of the right of way may be entitled, the board of flood irrigation shall issue warrants in sums sufficient to pay the damages so assessed, drawn upon the proper county treasurer and payable out of any funds in the hands of the treasurer for the construction of such flood irrigation project. Such warrants shall be negotiated at not less than their par value and the proceeds thereof paid to the owners of the land entitled thereto, according to such assessments of damages. The surplus, if any, shall be paid to the county treasurer, who shall place the same to the credit of the proper flood irrigation project fund.

61-12-22. Assessment of accruing benefits. Upon acquiring the right of way, and after the completion of the assessment of damages as provided in this chapter, the board of flood irrigation shall assess the percentage of the cost of constructing and maintaining the flood

irrigation project and providing the right of way therefor and of paying all damages incurred by the owners of land affected thereby which any lot, piece, or parcel of land shall be liable to pay by reason of the benefits accruing thereto, either directly or indirectly, by reason of the construction of such project.

61-12-23. Assessment of benefits subject to review. The assessment of benefits provided for in section 61-12-22 also is subject to review in the manner provided in section 28-34-01.

61-12-24. Return of assessment of benefits. After the assessment of benefits has been made, as provided in this chapter, or has been confirmed, if an appeal has been taken, and the specific amount of each assessment has been extended as provided by this chapter, the board of flood irrigation shall make return thereof to the county auditor who shall record the same in a book to be provided by the county for that purpose. Such return shall contain the petition for the project, a copy of the minutes of the survey and of the plans and specifications signed by the engineer, a copy of the order establishing the flood irrigation project, conveyances of the right of way, if any, and the assessments of damages and benefits.

61-12-25. Notice of construction - Letting of contracts. After the order establishing a project has been entered, the board of flood irrigation shall advertise bids in accordance with chapter 48-01.2 for the construction of all work required, as shown by the plans and specifications on file.

61-12-26. Computation of costs - Contents. After the letting of a contract for the construction of flood irrigation works, the board of flood irrigation shall make a computation of the cost of the project which shall include:

1. All the expenses of locating and establishing the same, including the cost of right of way.
2. The damages paid to landowners for any cause.
3. The fees of the board and the legal and other necessary expenses incurred under the authorization of the board, including the cost of surveys, plans, and specifications.
4. Interest on all warrants issued or to be issued by the board of flood irrigation on account of such project, accumulated or to accumulate prior to the time when the tax levied or to be levied to pay therefor is collectible by law.
5. All other expenses, together with the amount of all contracts let for the construction of the same.

The sum of all the costs and expenses thus incurred or to be incurred shall be the cost of the construction of such project.

61-12-27. Apportionment and enforcement of taxes. After fixing the cost of a flood irrigation project, the board of flood irrigation shall carry out upon the assessment list the specific amount which each lot or tract of land benefited by the project for which the tax is levied is liable to pay on account of procuring the same according to the percentage which by section 61-12-22 it is required to fix and determine. Such list thereupon shall be filed in the office of the county auditor of the county in which the lands benefited are situated and the auditor shall extend upon the tax list as a special tax the several amounts shown by such list, specifying in such tax list the particular flood irrigation project for the construction or procurement of which the special tax is assessed. Such special tax shall be collected and enforced in the same manner as other taxes.

61-12-28. Collection of flood irrigation taxes - Payment of expenses. The flood irrigation taxes shall be collected by the county treasurer and all moneys so collected shall be credited to the flood irrigation fund to which they belong, and the county treasurer shall be the

custodian of such funds. Payment of all the expenses and costs of locating and constructing any such project shall be made upon approval by the board of flood irrigation. Warrants therefor shall be signed by the chairman and secretary of the board. All such warrants, after presentation to the county treasurer for payment, if not paid for want of funds, shall be registered by the county treasurer, and thereafter shall bear interest at a rate not exceeding five percent per annum.

61-12-29. Additional assessments - When necessary. In case the amount realized from the assessment made for the construction of any flood irrigation project shall not be sufficient to pay therefor or to complete the same and pay all fees and incidental expenses, or to pay and retire any bonds issued in connection with the construction thereof, or if an enlargement of such project, or an extension thereof, becomes necessary, a further assessment shall be made to meet the additional expense, and the amount thereof shall be levied and collected in the manner provided in this chapter.

61-12-30. Board of flood irrigation may contract for purchase of water - Assessment for maintenance. The board of flood irrigation shall have the exclusive care, management, and control of a flood irrigation project, but for such purpose may enter into a contract with responsible parties for the operation thereof, and may also, when necessary, enter into a contract with the United States, or with a district or political subdivision of the state, for purchase of water, or for furnishing water for flood irrigation. For the purpose of defraying the expense of the care, operation, maintenance, and repair of such project, including fees of the members of the board, said board annually shall certify to the county auditor the amount that will be required for such purposes during the following year. Thereupon the county auditor shall apportion to the several parcels or tracts of land within such project the amount which each parcel or tract of land shall be assessable, such apportionment to be made on the basis on which the original benefits were assessed under the provisions of section 61-12-22, and shall extend such amount upon the tax lists as a special tax. The taxes so collected shall be credited to the proper fund.

61-12-31. Joint powers of flood irrigation boards in two or more counties - Apportionment of cost. Whenever it shall be deemed necessary by the boards of flood irrigation of two or more counties in this state to construct or extend a project through or into two or more counties in the state, the several boards of flood irrigation in the counties into or through which such proposed project may extend when completed, are empowered to establish, construct, and maintain such project through or into two or more counties in the following manner:

1. There first shall be presented to the board of flood irrigation in each of such counties a petition for the establishment of such flood irrigation project in the several counties as provided by law, and the boards of the several counties shall determine upon the necessity or expediency of the establishment of such flood irrigation project as provided by law;
2. The several boards of flood irrigation of the counties through or into which such proposed project may run then shall meet and agree upon the proportion of damages and benefits to accrue to the lands affected in each county, and for this purpose they shall consider the entire course and territory of such project in all said counties as one project;
3. They may apportion the cost of establishing and constructing such entire project ratably and equitably upon the lands in each county in proportion to the benefits to accrue to such lands;
4. When they have so apportioned the same they shall make a written report of such apportionment to the auditors of the several counties affected, and the report shall show the portion of the cost of such entire project to be paid by taxes upon the lands in each of such counties. Such report shall be signed by the boards of flood irrigation of all counties affected; and

5. Upon the filing of such report, the board of flood irrigation of each county shall meet and assess against the lands in such county ratably and equitably as provided by law an amount sufficient to pay the proportion of the cost of such drain fixed for such county by all said boards.

61-12-32. Tax or assessment not void. The collection of no tax or assessment levied or ordered to be levied to pay for the location and construction of any project of flood irrigation laid out and constructed under this chapter shall be enjoined perpetually or declared absolutely void in consequence:

1. Of any error of any officer or board in the location and establishment thereof;
2. Of any error or informality appearing in the record of the proceedings by which any such project shall have been located or established; nor
3. For want of proper conveyance or condemnation of the right of way.

The court in which any proceeding may be brought to reverse or to declare void the proceedings by which any project has been located or established, or to enjoin the taxes levied to pay therefor, on application of either party, shall appoint such person or persons to examine the premises or to survey the same, or both, as may be deemed necessary, and the court on final hearing shall make such order in the premises as shall be just and equitable and may order such taxes, or any part thereof, to remain on the tax list for collection or, if the same shall have been paid under protest, shall order the whole or such part thereof as may be just and equitable to be refunded, the costs of said proceedings to be apportioned among the parties as justice may require.

61-12-33. New proceedings - When. If any proceedings for the location, establishment, or construction of any project under the provisions of this chapter have been, or hereafter shall be, enjoined, vacated, set aside, declared void, or voluntarily abandoned by the board of flood irrigation in consequence of any error, irregularity, or want of jurisdiction affecting the validity of such proceedings, and if any warrants shall have been issued in connection with such invalid or abandoned proceedings, the board of flood irrigation nevertheless may proceed under the provisions of this chapter to locate, establish, and construct the project under the name and in the location specified in the invalid or abandoned proceedings, or under a different name or in a different location. Such new proceedings shall be in accordance with the general provisions of this chapter.

61-12-34. Liability of members of flood irrigation board. Each board of flood irrigation shall make a report to the board of county commissioners of all projects begun, in process of construction, or finished, and also shall render a full account of all moneys which shall come into its hands. Every member of the board of flood irrigation shall be liable on the member's bond for any misapplication of money coming into the member's hands as a member of such board. The report required by this section shall include an itemized statement of all expenses and warrants drawn on account of each project.

61-12-35. Compensation of members of the board. Each member of a board of flood irrigation shall receive for services three dollars per day for the time actually spent by the member in the performance of the duties of office. Any member or officer of the board may receive additional compensation for special services rendered to the board and under the authority thereof.

61-12-36. Power of board of flood irrigation to administer oath. Any member of the board of flood irrigation shall have the power to administer any oath required in any proceeding had before the board or in which such member may be called to act officially.

61-12-37. Bonds - Issuance - Payment. The board of county commissioners of any county in which any flood irrigation project is proposed to be located and constructed shall issue bonds upon the written request of the board of flood irrigation. Such bonds shall be known as

flood irrigation bonds and shall be in such sums as may be necessary for the purpose of defraying the expenses incurred or to be incurred in obtaining the right of way or in locating or constructing any such project. The word "expenses" as used in this section shall be construed to cover every item of cost of said project from its inception to its completion as provided by this chapter. Such bonds shall be paid out of the revenues to be derived from taxes levied or to be levied and collected from that portion of the county found by the board of flood irrigation to be benefited by the project.

61-12-38. Interest rate of bonds. Flood irrigation bonds issued as provided in this chapter shall bear interest at a rate or rates resulting in an average net interest cost not exceeding twelve percent on those issues which are sold at private sale. There is no interest rate ceiling on those issues sold at public sale or to the state of North Dakota or any of its agencies or instrumentalities. Interest and principal may be payable under the amortization plan over a period of not to exceed twenty years, or the principal may be divided into such amounts and made payable at such periods, not exceeding twenty years, as the board of county commissioners may determine.

61-12-39. Payment of entire assessment by landowner. Any landowner who may desire to pay the entire amount assessed against the landowner's land for the entire cost of any flood irrigation project, including warrants and interest thereon, prior to the sale of bonds may pay into the county treasury the amount of said assessments, for which the treasurer shall give the treasurer's receipt in full. Such lands shall not be included in the list of lands assessed.

61-12-40. Notice of issue of bonds - Given by county auditor. The county auditor shall give notice of the determination of the board of county commissioners to issue bonds by publishing a notice in the official newspaper of the county at least fifteen days before the date of selling said bonds. Said notice shall designate the project proposed to be bonded and in general terms shall notify all persons interested of their right to pay their total assessment prior to the date of the sale of said bonds, as provided in section 61-12-39. The money paid in shall be used to take up warrants, and the bonds issued shall be for such an amount as will pay the remainder of the cost of construction.

61-12-41. Sinking fund. The board of county commissioners shall provide sinking funds for the payment at maturity of each series of bonds issued and for the payment of the annual interest on the same if serial bonds are issued.

61-12-42. Bonds issued on amortization plan. If bonds are issued on the amortization plan, the board of county commissioners shall provide funds for the payment of each annual amortization maturity, both for the payment of interest and for the principal portion of said maturity.

61-12-43. Regulations concerning issuance of bonds under this chapter. The bonds issued under the provisions of this chapter shall be signed by the chairman of the board of county commissioners of the county and countersigned by the county auditor, who shall keep a record of such bonds. Such board shall have the power to negotiate such bonds at not less than the par value thereof as it may deem for the best interests of all persons interested in the flood irrigation project for the cost of which the bonds are issued. Such bonds shall contain a recital that the same are issued in accordance with the provisions and pursuant to the authority of this chapter and that they are to be paid out of the sinking funds to be created as provided for in this chapter, if issued serially. Whenever such bonds shall be issued the tax provided for in section 61-12-27 shall not be collected all in one year but shall be divided into parts corresponding with the amounts and maturities of the bonds. Such parts shall be extended year by year upon the tax lists by the county auditor against the parcels of land and property liable to taxation for that purpose and collected in such year, and such fund shall constitute the sinking fund provided by this section. Should the bonds be issued and made payable under the amortization plan of payment, the tax provided for in said section shall be divided into parts corresponding with the principal payment required to be made each year under the said amortization plan, and such parts shall be extended year by year upon the tax lists in the manner and form provided herein for the retirement of bonds issued with serial maturities.

61-12-44. Levy of tax for interest - Separate sinking funds - County not liable for bonds. The board of county commissioners in each year shall levy upon the property liable to taxation on account of the location and construction of any project as provided by this chapter a tax sufficient to pay the annual interest on any bonds which may have been issued for the purpose of locating and constructing such project. Separate sinking funds shall be provided for each separate project for the construction of which bonds shall have been issued. No funds in any such sinking fund shall be applied to any other purpose than the payment of the bonds for the payment of which such fund was created. No county shall be liable for the payment of any bonds issued under the provisions of this chapter but such bonds shall be paid only out of the sinking funds created as provided in this chapter.

61-12-45. Assessment of omitted property - Additional assessments. If an improvement has been or hereafter shall be established, constructed, or maintained pursuant to the provisions of this chapter, the board of flood irrigation, even after the benefits therefor have been assessed, shall have the power, either upon its own motion or upon the request of any interested property owner within said improvement district, and after said improvement has been established and constructed, to examine into and determine whether any property located within said improvement district has not been assessed for benefits. If such board shall find and determine that such property has not been assessed for benefits and in fact has benefited by the establishment, construction, and maintenance of such improvement, it shall proceed to assess such property for such benefits. After the improvement has been established and constructed, the board likewise, upon petition of an owner, may reexamine the benefits thereof. If it appears from such reexamination that more property of such owner has been assessed than actually has been benefited, the board may reassess such benefits so as to conform to the proven facts. All assessments made under this section otherwise shall be made and reviewed in the manner provided in sections 61-12-22 through 61-12-24. If additional assessments are made pursuant to this section, the amount thereof shall be used, first to pay deficiencies in the cost of said project, if any, and the balance thereof, if any, shall be credited equitably and ratably upon the last payment of the assessments made upon the property originally assessed.

61-12-46. State engineer to assist county board of flood irrigation. The state engineer, upon the request of the board of flood irrigation of any county in this state, shall assist said board in determining whether or not the construction of any proposed dams, gates, and necessary ditches and canals for the purpose of controlling, regulating, and forcing the overflow of water in nonnavigable rivers or streams within this state, would be conducive to the public health, convenience, or welfare.

61-12-47. Assessment for drainage. The board of flood irrigation of any flood irrigation project shall be and is empowered to levy a special tax against all land located within any particular pond in the project to be used for necessary ditching of lands located within the particular pond of the flood irrigation project to procure proper drainage for such lands. Said board shall annually certify to the county auditor the amount that shall be required for such drainage purposes during the following year. Thereupon the county auditor shall apportion the same to the several tracts or parcels of land within such pond within the project, the amount which each parcel or tract of land shall be assessable within said pond, such apportionment to be made on the basis on which the original benefits were assessed within the particular pond under the provisions of section 61-12-22, and shall extend such amount upon the tax lists as a special tax on the lands in such pond. The taxes so collected for drainage shall be credited to a drainage fund for the pond of the project involved.

61-12-48. Transfer of sinking fund to maintenance fund - Duty of county treasurer. The board of flood irrigation of any flood irrigation project shall have the right upon the payment of all the bonded debt of the flood irrigation project, by resolution, to transfer any and all funds then remaining in the sinking fund of the project to the maintenance fund of the project for use in maintenance, repair and care, and for payment of outstanding and unpaid warrants issued for maintenance of the project. The county treasurer as custodian of the funds of any flood irrigation project, of any county in this state, shall upon receipt of a certified copy of a resolution of any board of flood irrigation, showing that all bonded debt of a flood irrigation project has been fully

paid, transfer any and all funds then remaining in the sinking fund of the project to the maintenance fund of the project.

**CHAPTER 61-13
ORGANIZATION OF CORPORATIONS FOR IRRIGATION PURPOSES**

	<u>Page</u>
<u>Section</u>	
61-13-01 Corporations or limited liability companies may be organized for irrigation purposes	61-13: 1
61-13-02 Powers of corporations and limited liability companies organized under chapter	61-13: 1
61-13-03 Articles of incorporation or bylaws may restrict sales to stockholders - When stock to become appurtenant to land – Sale of water to others	61-13: 2
61-13-03.1 Articles of organization or operating agreement may restrict sales to members - When membership interest to become appurtenant to land - Sale of water to others	61-13: 2
61-13-04 Assessments may be levied upon capital stock	61-13: 2

CHAPTER 61-13

ORGANIZATION OF CORPORATIONS FOR IRRIGATION PURPOSES

61-13-01. Corporations or limited liability companies may be organized for irrigation purposes. A corporation or limited liability company may be formed for the purpose of acquiring water rights, or for the purpose of establishing, owning, leasing, operating, and maintaining an irrigation system and selling, distributing, supplying, and delivering water for irrigation purposes, or for domestic use, to its members or stockholders.

61-13-02. Powers of corporations and limited liability companies organized under chapter. A corporation or limited liability company organized for irrigation purposes may:

1. Engage in any corporate activity not otherwise prohibited by law and not inconsistent with the purposes mentioned in section 61-13-01.
2. Acquire water rights, easements, sites, and all means, property, machinery, and equipment necessary or required in connection with the operation and maintenance of an irrigation system.
3. Establish, construct, maintain, and operate pumping plants, wells, pipelines, canals, and ditches and all other necessary facilities required for the appropriation of water and the operation and maintenance of an irrigation system.
4. Borrow money in an amount, whether in excess of the amount of its capital stock or membership interests or not, necessary to enable it to carry out the intent and purposes for which it is organized, and as security for the payment of any loan, to pledge or mortgage real or personal property acquired by the proceeds of such loan, or otherwise, including future earnings or income of the corporation or limited liability company.
5. Acquire, purchase, or lease water rights, franchises, and irrigation works and facilities, or any part thereof, from any person, firm, corporation, limited liability company, or irrigation district, and from any state or federal agency.
6. Furnish water for irrigation or domestic use, to its members or stockholders, and to furnish and sell water to any person, firm, corporation, or limited liability company.
7. Adopt bylaws and rules for the furnishing of water, and for charges to be made therefor.
8. Levy assessments against its members or stockholders necessary for the maintenance and operation of the irrigation system, if one is established and maintained.
9. Fix rates of tolls and charges for water, to collect the same, to require that charges for water be paid in advance of the irrigation season, to suspend the delivery of water to any land for the irrigation of which the charges and tolls have not been paid, and to provide for the suspension of water delivery to any land upon which assessments, apportioned and levied, remain unpaid for one year after having become due and payable.
10. Enter into contracts with any person, firm, association, corporation, limited liability company, irrigation district, this state, or any department or agency thereof, or the United States, or with any department or agency of the United States, for supplying water for the irrigation of the lands of its members or stockholders. Such supply of water may be either the entire supply of water necessary to irrigate said lands or to supplement waters supplied or controlled by the corporation or limited liability company.

11. Do each and every thing necessary, suitable, or proper for the accomplishment of any one or more of the objects enumerated in this section, and to exercise and possess all powers, rights, and privileges necessary or incidental to the purposes for which the corporation or limited liability company is organized, or to the activities in which it is engaged.
12. Exercise any other rights, powers, and privileges not inconsistent with the purposes of this chapter granted by this state to ordinary corporations or limited liability companies or to mutual aid corporations organized under chapter 10-12.

61-13-03. Articles of incorporation or bylaws may restrict sales to stockholders - When stock to become appurtenant to land - Sale of water to others. Any corporation organized for irrigation purposes may provide in its articles of incorporation or bylaws that water shall be sold, distributed, supplied, or delivered only to owners of its shares of stock and that such shares shall be appurtenant to the lands described in the certificate issued and evidencing such shares of stock. When such certificate and a copy of such articles of incorporation or bylaws are recorded in the office of the recorder of the county in which such lands are situated, such shares of stock shall become appurtenant to said lands and shall be transferred only with the sale or transfer of such lands, except in the event of sale or forfeiture of such shares of stock for delinquent assessments thereon as provided in section 61-13-04. Notwithstanding such provision in its articles of incorporation or bylaws, any corporation organized for irrigation purposes may sell water to an irrigation district, this state, or any department or agency thereof, and to the United States, or any department or agency thereof, at the same rates as to holders of shares of such corporation. In the event lands to which any such stock is appurtenant are acquired by this state, the United States, or any department or agency thereof, such stock shall be canceled by the corporation, but shall be reissued to any persons subsequently acquiring title to such land.

61-13-03.1. Articles of organization or bylaws may restrict sales to members - When membership interest to become appurtenant to land - Sale of water to others. Any limited liability company organized for irrigation purposes may provide in the articles of organization or bylaws that water must be sold, distributed, supplied, or delivered only to owners of the limited liability company's membership interests and that these membership interests must be appurtenant to the land described in the document evidencing these membership interests. If a copy of the articles of organization or bylaws is recorded in the office of the recorder of the county in which the lands are situated, the membership interests become appurtenant to the lands and may be transferred only with the sale or transfer of the lands, except in the event of sale or forfeiture of the membership interests for delinquent assessments on the land as provided in section 61-13-04. Notwithstanding any provision in the limited liability company's articles of organization or bylaws, any limited liability company organized for irrigation purposes may sell water to an irrigation district, this state, or any department or agency of this state, and to the United States, or any department or agency of the United States, at the same rates as to holders of membership interests of the limited liability company. If lands to which any membership interest is appurtenant are acquired by the state, the United States, or any department or agency of the state or the United States, the membership interest must be canceled by the limited liability company and must be reissued to any persons acquiring title to the land at a later date.

61-13-04. Assessments may be levied upon capital stock. Any corporation or limited liability company organized for irrigation purposes, unless otherwise provided in its articles of incorporation or bylaws, may levy assessments upon its capital stock whether or not such stock is paid in full. If any shares of stock of any such corporation or membership interests of any such limited liability company, which have been made appurtenant to any land as provided in section 61-13-03, become delinquent in the payment of assessments, the right to receive water thereunder or through dividends on such stock or membership interests may be denied and such shares or membership interests may be forfeited to the corporation or limited liability company.

CHAPTER 61-14 **GENERAL RULES GOVERNING IRRIGATION**

<u>Section</u>		<u>Page</u>
61-14-01	Units of measurement	61-14: 1
61-14-02	[Repealed].....	61-14: 1
61-14-03	Amount of water for irrigation	61-14: 1
61-14-04	[Repealed].....	61-14: 1
61-14-05	[Repealed].....	61-14: 1
61-14-06	Measuring devices - Unlawful to take water without using	61-14: 1
61-14-07	Unlawful interference with rights to use of water - Penalty	61-14: 1
61-14-08	Unlawful use of water and waste - Penalty	61-14: 1
61-14-09	Bridges over ditches or canals - Penalty	61-14: 1
61-14-10	Obstructing works unlawful	61-14: 2
61-14-11	Penalty	61-14: 2
61-14-12	Liens on land	61-14: 2
61-14-13	Seepage water	61-14: 2
61-14-14	Disposition of state lands	61-14: 2
61-14-15	Unauthorized diversion of water from irrigation ditches	61-14: 2
61-14-16	Willfully allowing water to flow or fall upon roadway prohibited - Penalty	61-14: 2

CHAPTER 61-14

GENERAL RULES GOVERNING IRRIGATION

61-14-01. Units of measurement. The standard of measurement for the flow and volume of water shall be established by rule by the state engineer.

61-14-02. Unused water reverts to public. Repealed by S.L. 1963, ch. 417, § 26.

61-14-03. Amount of water for irrigation. In the issuance of a permit to appropriate water for irrigation or in the adjudication of the rights to the use of water for such purpose, the amount of water allowed by the state engineer shall not be in excess of two acre-feet [2466.96 cubic meters] of water per acre [.40 hectare] per year, or the equivalent thereof, delivered on the land, except that during periods of sufficient water supply the state engineer, in accordance with the method of irrigation being used, the type of soil to which the water is to be applied, and other criteria established by the state engineer, may increase the amount of water allowed to three acre-feet per acre [3700.45 cubic meters per .40 hectare], per irrigation season, for a specified period of time which in no event shall be of greater duration than the period of sufficient water supply. Notwithstanding any other provision of this section, the state engineer may not allow more of an amount of water than can be beneficially used.

61-14-04. Water appurtenant to land for irrigation purposes. Repealed by S.L. 1963, ch. 417, § 26.

61-14-05. Change of use or place of diversion. Repealed by S.L. 1977, ch. 569, § 27.

61-14-06. Measuring devices - Unlawful to take water without using. Every ditch owner shall construct and maintain a substantial headgate at the point where the water is diverted and shall construct a measuring device, of a design approved by the state engineer, at the most practicable point or points for measuring and apportioning the water as determined by the state engineer. The state engineer may order the construction of such device by the ditch owner and if not completed within twenty days thereafter the person in charge of the irrigation works, upon instructions from the state engineer, shall refuse to deliver water to such owner. The taking of water by such ditch owner until the construction of such device and the approval thereof by the state engineer shall be unlawful. Such devices shall be so arranged that they can be locked in place, and when locked by the person in charge of the irrigation works or that person's authorized agent, for the measurement or apportionment of water, it shall be unlawful to interfere with, disturb, or change the same, and the use of water through such device after having been interfered with, disturbed, or changed shall be prima facie evidence of the guilt of the person benefited by such interference, disturbance, or change.

61-14-07. Unlawful interference with rights to use of water - Penalty. Any person interfering with or injuring or destroying any headgate, weir, benchmark, well, or other appliance or works for the appropriation, diversion, storage, apportionment, or measurement of water, or for any hydrographic or hydrologic surveys, or who shall interfere with any person engaged in the discharge of duties connected therewith, shall be guilty of a class A misdemeanor, and also shall be liable for the injury or damage resulting from such unlawful act. The state engineer and the person in charge of an irrigation work, and their authorized assistants and agents, may enter upon private property for the performance of their respective duties, but shall do no unnecessary injury thereto.

61-14-08. Unlawful use of water and waste - Penalty. The unauthorized use of water to which another person is entitled, or the willful waste of water to the detriment of another, shall be unlawful. It also shall be unlawful to begin or carry on any construction of works for storing or carrying water until after the issuance of a permit to appropriate such waters. The penalty for any violation of this section is a class A misdemeanor.

61-14-09. Bridges over ditches or canals - Penalty. The owner of any ditch, canal, or other structure for storing or carrying water shall construct and maintain a bridge where the same

crosses any highway or publicly traveled road, in accordance with the requirements of the state agency or political subdivision which has control over the road, or shall reconstruct the road in a substantial manner and in a convenient location for public travel. The board of county commissioners shall be authorized to construct any bridge or road, if not built by the owner of the works within three days after the obstruction of the road, and may recover the expenses thereof and costs in a civil suit, unless the same shall be paid by the owner of the works within ten days after demand therefor. The board of county commissioners may make reasonable requirements as to the size and character of any such bridge along a public highway, or for the necessary reconstruction of such a road, and upon failure to comply therewith, may do the necessary work and collect the expense thereof and costs as hereinbefore provided. After the construction of such bridge or road as part of a public highway, the same shall be maintained by the board of county commissioners.

61-14-10. Obstructing works unlawful. Whenever any appropriator of water has the right of way for the storage, diversion, or carriage of water, it shall be unlawful to place or maintain any obstruction which shall interfere with the use of the works or prevent convenient access thereto.

61-14-11. Penalty. If no penalty is provided specifically, any violation of the provisions of this chapter, declared herein to be unlawful, shall be a class B misdemeanor.

61-14-12. Liens on land. All liens on land, provided for in chapter 61-09, shall be superior in right to all mortgages or other encumbrances placed upon the land and the water appurtenant thereto or used in connection therewith.

61-14-13. Seepage water. In the case of seepage water from any constructed works, any party desiring to use the same shall make application to the state engineer, as in the case of unappropriated water, and such party shall pay to the owner of such works a reasonable charge for the storage or carriage of such water in such works, if the appearance of such seepage water can be traced beyond reasonable doubt to the storage or carriage of water in such works. The state engineer shall not issue a permit to appropriate such seepage waters until an agreement for the payment of such charges shall have been entered into by the said parties.

61-14-14. Disposition of state lands. No lands belonging to the state, within the areas to be irrigated from works constructed or controlled by the United States, or its duly authorized agencies, shall be sold except in conformity with the classification of farm units by the United States, and the title to such lands shall not pass from the state until the applicant therefor shall have complied fully with the provisions of the laws of the United States and the regulations thereunder concerning the acquisition of the right to use water from such works and shall produce the evidence thereof duly issued. After the withdrawal of lands by the United States for any irrigation project, no application for the purchase of state lands within the limits of such withdrawal shall be accepted, except upon the conditions prescribed in this section. Any state lands needed by the United States for irrigation works shall be sold to the United States at the lowest price authorized by law.

61-14-15. Unauthorized diversion of water from irrigation ditches. It is unlawful for any person to divert any of the water from any irrigation works in this state without first having obtained the permission of the owner of the works or of the person or persons lawfully in charge thereof.

61-14-16. Willfully allowing water to flow or fall upon roadway prohibited - Penalty. No person may place, erect, or operate a sprinkler irrigation system, center pivot irrigation system, or other irrigation works or equipment upon or across any highway, street, or road or in such a manner as to willfully allow water from the irrigation works or equipment to flow or fall upon any highway, street, or road. This section does not apply to the transportation of irrigation works or equipment upon a highway, street, or road. A person violating this section is guilty of an infraction.

CHAPTER 61-15 WATER CONSERVATION

<u>Section</u>		<u>Page</u>
61-15-01	Definitions	61-15: 1
61-15-02	Control of water and wildlife conservation projects vested in state	61-15: 1
61-15-03	Water and wildlife conservation projects - Supervision	61-15: 1
61-15-04	Easements to United States of America for water and wildlife conservation	61-15: 1
61-15-05	[Repealed].....	61-15: 1
61-15-06	Board of university and school lands empowered to grant easements for water and wildlife conservation.....	61-15: 1
61-15-07	[Repealed].....	61-15: 1
61-15-08	Drainage of meandered lake - Penalty	61-15: 1
61-15-09	Conservation of lakes and streams of Turtle Mountain region	61-15: 1
61-15-10	Permitting municipal corporations to dam Red River of the North..	61-15: 2

CHAPTER 61-15 WATER CONSERVATION

61-15-01. Definitions. In this chapter, unless the context or subject matter otherwise requires:

1. "A navigable lake" shall include any lake which shall have been meandered and its metes and bounds established by the government of the United States in the survey of public lands.
2. "Ordinary high-water mark" shall mean that line reached by water when lake or stream is ordinarily full and the water ordinarily high.

61-15-02. Control of water and wildlife conservation projects vested in state. By virtue of its police power the state shall be vested with the control of navigable lakes which have been meandered and their metes and bounds established by the government of the United States in the survey of public lands, within the ordinary high-water mark for the purpose of constructing, maintaining, and operating dams, dikes, ditches, fills, spillways, or other structures to promote the conservation, development, storage, distribution, and utilization of such water and the propagation and preservation of wildlife.

61-15-03. Water and wildlife conservation projects - Supervision. The authority, control, and supervision of all water and wildlife conservation projects and wildlife reservations shall be vested in the state engineer. The state engineer may accept cooperation, aid, and assistance from the United States of America, its instrumentalities or agencies, in the construction, maintenance, and operation of any structure for the purposes set forth in this chapter and may do any act necessary to make such aid, assistance, and cooperation from the federal government available, and shall have the right to grant such easements to the United States of America, its instrumentalities or agencies, as may be required.

61-15-04. Easements to United States of America for water and wildlife conservation. An easement may be granted to the United States, its instrumentalities or agencies, over all lands now owned or hereafter acquired by the state of North Dakota for rights of way for ditches, dams, dikes, fills, spillways, or other structures now constructed or to be constructed for the purpose of water or wildlife conservation.

61-15-05. Recording or filing fees for documents required by United States or state for water or wildlife conservation project. Repealed by S.L. 1947, ch. 189, § 1.

61-15-06. Board of university and school lands empowered to grant easements for water and wildlife conservation. The board of university and school lands may grant to the United States of America, its instrumentalities or agencies, such easement rights as may be required for the construction, maintenance, and operation of any dam, dike, ditch, fill, spillway, or other structure erected or to be erected for water or wildlife conservation purposes on the public lands of this state.

61-15-07. Water and wildlife conservation projects not to diminish value of land. Repealed by S.L. 1963, ch. 417, § 26.

61-15-08. Drainage of meandered lake - Penalty. Any person who, without written consent of the state engineer, shall drain or cause to be drained, or who shall attempt to drain any lake or pond, which has been meandered by the government of the United States in the survey of public lands, shall be guilty of a class B misdemeanor.

61-15-09. Conservation of lakes and streams of Turtle Mountain region. The state engineer of this state shall take such action as may be necessary to conserve the water levels and rehabilitate the streams and brooks in the Turtle Mountain region of North Dakota lying in

Bottineau and Rolette Counties, and shall do any act necessary to bring about such rehabilitation of streams, lakes, and brooks.

61-15-10. Permitting municipal corporations to dam Red River of the North. Any municipality owning or permanently controlling land upon which a proposed dam is to be constructed may construct a dam thereon and across that portion of the Red River of the North which forms a part of the boundary common to the state of North Dakota and the state of Minnesota, for the purpose of conserving water for municipal, commercial, and domestic use, constructing in connection therewith such appliances, fishways, raceways, sluiceways, and wasteways as may be necessary or convenient for the proper construction and utility of such dam and as may be required by law. If required by law or treaty, the consent of the United States and of the state of Minnesota shall be obtained first.

CHAPTER 61-16 **CREATION OF WATER RESOURCE DISTRICTS - BOARDS**

<u>Section</u>	<u>Page</u>
61-16-01 [Repealed]	61-16: 1
61-16-02 [Repealed]	61-16: 1
61-16-03 [Repealed]	61-16: 1
61-16-04 [Repealed]	61-16: 1
61-16-05 Water resource districts - Areas to be included	61-16: 1
61-16-06 Order creating water resource district	61-16: 1
61-14-06.1 Consolidation of water resource districts	61-16: 1
61-16-07 Water resource board - Appointment and number	61-16: 2
61-16-08 Eligibility for appointment to board - Term of office - Removal	
Filling vacancies - Compensation of managers	61-16: 2
61-16-08.1 Appointment of alternate board member due to conflict of interest or illness	61-16: 3
61-16-09 Oath of office - Organization of water resource board – Appointment of employees - Meetings	61-16: 3
61-16-10 [Repealed]	61-16: 3
61-16-11 [Repealed]	61-16: 3
61-16-11.1 [Repealed]	61-16: 3
61-16-12 [Repealed]	61-16: 3
61-16-13 [Repealed]	61-16: 4
61-16-14 [Repealed]	61-16: 4
61-16-15 [Repealed]	61-16: 4
61-16-16 [Repealed]	61-16: 4
61-16-17 [Repealed]	61-16: 4
61-16-18 [Repealed]	61-16: 4
61-16-19 [Repealed]	61-16: 4
61-16-19.1 [Repealed]	61-16: 4
61-16-20 [Repealed]	61-16: 4
61-16-21 [Repealed]	61-16: 4
61-16-22 [Repealed]	61-16: 4
61-16-23 [Repealed]	61-16: 4
61-16-24 [Repealed]	61-16: 4
61-16-25 [Repealed]	61-16: 4
61-16-26 [Repealed]	61-16: 4
61-16-26.1 [Repealed]	61-16: 4
61-16-27 [Repealed]	61-16: 4
61-16-28 [Repealed]	61-16: 4
61-16-28.1 [Repealed]	61-16: 4
61-16-29 [Repealed]	61-16: 5
61-16-30 [Repealed]	61-16: 5
61-16-31 [Repealed]	61-16: 5
61-16-32 [Repealed]	61-16: 5
61-16-33 [Repealed]	61-16: 5

61-16-34	[Repealed]	61-16: 5
61-16-34.1	[Repealed]	61-16: 5
61-16-35	[Repealed]	61-16: 5
61-16-36	[Repealed]	61-16: 5
61-16-37	[Repealed]	61-16: 5
61-16-38	[Repealed]	61-16: 5
61-16-39	[Repealed]	61-16: 5
61-16-40	[Repealed]	61-16: 5
61-16-41	[Repealed]	61-16: 5
61-16-42	[Repealed]	61-16: 5
61-16-43	[Repealed]	61-16: 5
61-16-44	[Repealed]	61-16: 5
61-16-45	[Repealed]	61-16: 5
61-16-46	[Repealed]	61-16: 5
61-16-47	[Repealed]	61-16: 5
61-16-47.1	[Repealed]	61-16: 6
61-16-48	[Repealed]	61-16: 6
61-16-49	[Repealed]	61-16: 6
61-16-50	[Repealed]	61-16: 6
61-16-51	[Repealed]	61-16: 6

CHAPTER 61-16

CREATION OF WATER RESOURCE DISTRICTS - BOARDS

61-16-01. Definitions. Repealed by S.L. 1981, ch. 632, § 11.

61-16-02. Petition for establishment of water conservation and flood control district - Hearing thereon and investigation - District when created. Repealed by S.L. 1973, ch. 500, § 13.

61-16-03. Bond to accompany petition for district - When - Exception. Repealed by S.L. 1973, ch. 500, § 13.

61-16-04. Resolution of governing body of public corporation filed with commission. Repealed by S.L. 1973, ch. 500, § 13.

61-16-05. Water resource districts - Area to be included. All land in North Dakota shall be within a water resource district.

61-16-06. Order creating water resource district. A certified copy of the order creating a water resource district shall be filed with the county auditor of each county within the district. A like copy of the order shall be filed with the secretary of state. The secretary of state shall issue to the state water commission a certificate, bearing the seal of the state, of the due organization of the district, and shall file a copy of the certificate and the commission's order creating the district. The secretary of state's certificate, or a copy authenticated by the secretary of state, shall be prima facie evidence of the organization of the district. This new district shall be, and is hereby declared to be, a governmental agency, and a body politic and corporate with the authority to exercise the powers specified in this chapter, or which may be reasonably implied to exercise such powers. The commission's order shall specify the name or number by which a district shall be known.

61-16-06.1. Consolidation of water resource districts.

1. Any two or more water resource districts may be consolidated into a single district or existing districts may be adjusted to reflect watershed boundaries, as determined by the state engineer, by filing with the water commission a petition signed by:
 - a. A majority of the members of the board of each of the districts; or
 - b. Fifty percent or more of the landowners within each of the districts.

When the petition is filed by the district boards, it must be accompanied by a certified copy of the resolution of the governing boards authorizing the signing of the petition. The petition must contain a detailed plan for the disposition of the property, assets, and liabilities of each of the districts. This plan must be as equitable as practicable to every landowner within the districts and must fully protect creditors and the holders of improvement warrants of the petitioning districts. The plan may provide for a continuance of assessments upon properties in the petitioning districts to retire outstanding obligations, or for the assumption of outstanding obligations and the spreading of assessments for the payment thereof over properties in the newly created district. No petition may be approved by the water commission unless it fully meets the requirements of this section.

2. The water commission shall fix a time and place for a public hearing at a site convenient and accessible for a majority of the affected individuals. At least fifteen days prior to the date of hearing, the commission shall publish notice of the hearing in at least one newspaper of general circulation in each of the districts being consolidated or adjusted. Additional notice of the hearing may be given in a manner prescribed by the water commission.

3. Prior to the hearing, the state engineer shall make, or cause to be made, an investigation of the need for consolidation of the petitioning districts and shall submit a report of the findings to the water commission. This report must be presented at the petition hearing. If the water commission finds it is not feasible, desirable, or practical to consolidate the petitioning districts, it shall deny the petition and state the reasons for denial. If, however, the water commission finds that problems of flood control, watershed development or improvement, drainage, water supply, or other reasons make consolidation or boundary adjustment and establishment of the proposed water resource district desirable, it shall grant the petition and create the district. Upon creation of the new water resource district, the water commission shall dissolve the included districts or make necessary boundary adjustments to existing districts.

61-16-07. Water resource board - Appointment and number. When a water resource district has been created, and the state water commission has filed notice with the county auditor of a county where the district or a part thereof is situated, a water resource board shall be appointed within ninety days, as provided herein. If the district's boundaries are confined to one county, the board of county commissioners shall appoint a water resource board consisting of three or five managers. When a district includes two counties, the water resource board shall consist of five managers: three appointed by the board of county commissioners of the county having the larger aggregate taxable valuation of property, and two appointed by the board of county commissioners of the other county. If a district includes three counties, the water resource board shall consist of five managers: one appointed by the board of county commissioners having the lowest aggregate taxable valuation of property in the district, and two appointed by the board of county commissioners of each of the other two counties. If a district includes four or six counties, the water resource board shall consist of two members from the county having the largest aggregate taxable valuation of property in the district, and one manager from each of the other counties. If a district includes five or seven counties, the water resource board shall consist of one manager from each county. Appointments to the water resource board shall be made by the boards of county commissioners of the respective counties.

61-16-08. Eligibility for appointment to board - Term of office - Removal - Filling vacancies - Compensation of managers. When a water resource district has been created, any resident landowner in the district, except a county commissioner, is eligible, subject to the provisions of this section, for appointment to the water resource board. The terms of office of managers appointed to the first water resource board shall be determined by lot and as herein provided. If the water resource board consists of three managers, one manager shall hold office for a term of two years, one shall serve for a term of three years, and one shall serve for a term of five years from the first day of January next following the date of their appointment. After expiration of the first term to expire after January 1, 1982, at least one of the managers appointed to a three-member district board shall be from a flood prone area, if any, within the district. When a district board consists of five managers, two managers shall hold office for the term of two years, one for three years, one for four years, and one manager for a term of five years from the first day of January next following the date of their respective appointments. After expiration of the first two terms to expire after January 1, 1982, at least two of the managers appointed to a five-member district board shall be from flood prone areas, if any, within the district. When a board consists of seven managers, two managers shall hold office for two years, two for three years, two for four years, and one for five years from the first day of January next following the date of their appointment. After expiration of the first three terms to expire after January 1, 1982, at least three of the managers appointed to a seven-member district board shall be from flood prone areas, if any, within the district. For the purposes of this section, a flood prone area is a floodplain area of a river subject to periodic and recurring flooding. After June 30, 1985, when the term of office of a district manager has expired, the manager's successor shall hold office for three years from the first day of January next following the date of the successor's appointment. The term of office of a manager does not terminate until the successor in office is appointed and qualified. In case the office of any district manager becomes vacant, the manager appointed to fill the vacancy shall serve the unexpired term of the manager whose office became vacant.

Each member of a water resource board shall receive the sum of at least forty-five dollars per day while performing duties as a member of the board, and an allowance for meals and lodging expenses at the same rate and under the same conditions as provided for state officials and employees. The allowance for travel expenses shall be at the same rate as provided by section 11-10-15 and shall be evidenced by a subvoucher or receipt as provided by section 21-05-01.

A manager may be removed from the board by the board of county commissioners after it appears to the board of county commissioners by competent evidence, and after a public hearing, if so requested by the manager subject to removal, at which hearing the manager must be apprised of and allowed ample opportunity to repudiate the evidence, that the manager has been guilty of misconduct, malfeasance, crime in office, neglect of duty in office, habitual drunkenness, gross incompetency, or inability to perform the duties of office for reasons of health.

61-16-08.1. Appointment of alternate board member due to conflict of interest or illness. When a member of a water resource board has a conflict of interest in a specific issue before the board or is unable to fulfill the duties of a board member because of physical or mental illness, the county commissioners may appoint a person to serve as an alternate to the disqualified board member. If the disqualification is for a conflict of interest, the alternate board member is to serve only for the purpose of deciding the particular issue causing the conflict. If the disqualification is for physical or mental illness, the alternate board member is to be appointed by the county commissioners only for one meeting at a time.

61-16-09. Oath of office - Organization of water resource board - Appointment of employees - Meetings. Upon receiving notice of appointment as member of the water resource board, such appointee shall take the oath of office prescribed for civil officers. Such oath shall be filed with the secretary of the board. Notice of the appointment of a member or members of a water resource board shall be mailed to the state water commission. Such notice shall state the name and post-office address of each appointee and the date of appointment.

A majority of the managers shall constitute a quorum for the transaction of such business as may come before the board but any number may adjourn a meeting for want of a quorum. The water resource board shall appoint a secretary and treasurer and such other employees as needed for the efficient conduct of the district's business and shall fix their compensation. The offices of secretary and treasurer may be held by the same person. Officers and employees shall hold office at the pleasure of the board.

The board shall provide an office suitable for its use as a meeting place and for conducting the affairs of the district. It shall adopt such rules for transacting the business of the district as it may deem necessary, including the time and place of holding regular meetings of the board. Special meetings may be called by the secretary on order of the chairman of the board or upon written request of two members of the board. Notice of a special meeting shall be mailed to each member of the board at least five days before any such meeting; provided, that a special meeting may be held whenever all members of the board are present or consent thereto in writing.

61-16-10. Bonds of treasurer and appointive officers. Repealed by S.L. 1981, ch. 632, § 11.

61-16-11. Powers and duties of board of commissioners. Repealed by S.L. 1981, ch. 632, § 11.

61-16-11.1. Joint exercise of powers. Repealed by S.L. 1981, ch. 632, § 11.

61-16-12. District budget - Tax levy - Financing by special assessment. Repealed by S.L. 1981, ch. 632, § 11.

61-16-13. District may issue warrants in anticipation of taxes levied to pay current expenses. Repealed by S.L. 1981, ch. 632, § 11.

61-16-14. County treasurer to collect and remit taxes to district treasurer - Deposit of district funds. Repealed by S.L. 1981, ch. 632, § 11.

61-16-15. Construction and repair of dam - Proposals for - Presented to whom - Hearing proposals. Repealed by S.L. 1981, ch. 632, § 11.

61-16-16. Commission and board of commissioners shall encourage construction of dams and other water control devices. Repealed by S.L. 1983, ch. 82, § 154.

61-16-17. Dams constructed within a district shall come under control of board of commissioners. Repealed by S.L. 1981, ch. 632, § 11.

61-16-18. When dams constructed by federal agency under control of water management district. Repealed by S.L. 1981, ch. 632, § 11.

61-16-19. May contract with federal and state governments - Local districts, persons and corporations - Canadian government, provinces and municipalities - Acquire property in adjoining states and provinces. Repealed by S.L. 1981, ch. 632, § 11.

61-16-19.1. Contracts for construction or maintenance of project. Repealed by S.L. 1981, ch. 632, § 11.

61-16-20. Exemption of federal agencies from provisions of chapter - Purpose of chapter. Repealed by S.L. 1969, ch. 545, § 5.

61-16-21. Financing project through special assessments or partly through general taxes and partly through special assessments - Apportionment of benefits. Repealed by S.L. 1981, ch. 632, § 11.

61-16-22. Financing of special improvements - Procedure. Repealed by S.L. 1981, ch. 632, § 11.

61-16-23. Resolution of board to include provision for protesting and refusing authority to make general tax levy in certain cases - Election to be held. Repealed by S.L. 1981, ch. 632, § 11.

61-16-24. When assessments may be made. Repealed by S.L. 1981, ch. 632, § 11.

61-16-25. Assessment lists. Repealed by S.L. 1981, ch. 632, § 11.

61-16-26. Assessment list to be prepared - Contents - Certificate attached to assessment list - Preparation of assessment list and notice of hearing of objection to list - Alteration of assessments at hearing - Limitations - Confirmation of assessment list of board certifying list - Filing. Repealed by S.L. 1981, ch. 632, § 11.

61-16-26.1. Reassessment of benefits. Repealed by S.L. 1981, ch. 632, § 11.

61-16-27. Correction of errors, and mistakes in special assessments - Regulations governing. Repealed by S.L. 1981, ch. 632, § 11.

61-16-28. Certification of assessments to county auditor. Repealed by S.L. 1981, ch. 632, § 11.

61-16-28.1. Removal of an obstruction to a drain - Notice and hearing - Appeal - Injunction - Definition. Repealed by S.L. 1981, ch. 632, § 11.

61-16-29. Extension of special assessments on tax lists - Collection - Payment to water management district. Repealed by S.L. 1981, ch. 632, § 11.

61-16-30. Lien of special assessment. Repealed by S.L. 1981, ch. 632, § 11.

61-16-31. Sale of property when general and special assessment taxes are delinquent. Repealed by S.L. 1981, ch. 632, § 11.

61-16-32. Warrants - Issuance - When payable - Amounts - Interest - Interest coupons. Repealed by S.L. 1981, ch. 632, § 11.

61-16-33. Warrants may be used in making payments on contract - Warrants payable out of fund on which drawn - May be used to pay special assessments. Repealed by S.L. 1981, ch. 632, § 11.

61-16-34. Refunding special assessment warrants - Purposes for which such warrants may be issued - Payment of warrants. Repealed by S.L. 1981, ch. 632, § 11.

61-16-34.1. Refunding outstanding refunding warrants - Terms and conditions. Repealed by S.L. 1981, ch. 632, § 11.

61-16-35. Financial reports - Liability for deficiencies. Repealed by S.L. 1981, ch. 632, § 11.

61-16-36. Appeal from decision of commission or board of commissioners - Undertaking - Jurisdiction. Repealed by S.L. 1981, ch. 632, § 11.

61-16-37. Appeal from decision of commission or board of commissioners - How to be taken. Repealed by S.L. 1981, ch. 632, § 11.

61-16-38. Time for taking appeal from commission or board of commissioners. Repealed by S.L. 1981, ch. 632, § 11.

61-16-39. Filing appeal - Docketing and hearing appeals - Final judgment and sending back. Repealed by S.L. 1981, ch. 632, § 11.

61-16-40. State's attorney and attorney general to assist boards - Employment of counsel. Repealed by S.L. 1981, ch. 632, § 11.

61-16-41. Construction of bridges and culverts - Cost. Repealed by S.L. 1963, ch. 421, § 22.

61-16-42. How district may be dissolved or land excluded therefrom. Repealed by S.L. 1973, ch. 500, § 13.

61-16-43. Proceedings to judicially confirm contracts, special assessments and other acts. Repealed by S.L. 1981, ch. 632, § 11.

61-16-44. Penalty for violation of chapter. Repealed by S.L. 1981, ch. 632, § 11.

61-16-45. Validating organization and acts of water conservation and flood control districts. Repealed by S.L. 1983, ch. 82, § 154.

61-16-46. Drains along and across public roads and railroads. Repealed by S.L. 1981, ch. 632, § 11.

61-16-47. Construction of bridges and culverts - Costs. Repealed by S.L. 1981, ch. 632, § 11.

61-16-47.1. Culvert and pipe arch bids and acceptance. Repealed by S.L. 1983, ch. 82, § 154.

61-16-48. Consolidation of water management districts. Repealed by S.L. 1981, ch. 632, § 11.

61-16-49. Division of a water management district. Repealed by S.L. 1981, ch. 632, § 11.

61-16-50. Closing a noncomplying drain - Notice and hearing - Appeal - Injunction. Repealed by S.L. 1981, ch. 632, § 11.

61-16-51. Closing a noncomplying dike or dam - Notice and hearing - Appeal - Injunction. Repealed by S.L. 1981, ch. 632, § 11.

CHAPTER 61-16.1 OPERATION OF WATER RESOURCE DISTRICTS

<u>Section</u>	<u>Page</u>
61-16.1-01 Legislative intent and purpose	61-16.1: 1
61-16.1-02 Definitions	61-16.1: 1
61-16.1-03 [Repealed]	61-16.1: 1
61-16.1-04 Minutes, books, and records	61-16.1: 2
61-16.1-05 Bonds of treasurer and appointive officers	61-16.1: 2
61-16.1-06 District budget - Tax levy - Financing by special assessment ..	61-16.1: 2
61-16.1-07 District may issue warrants in anticipation of taxes levied to pay current expenses	61-16.1: 2
61-16.1-08 County treasurer to collect and remit taxes to district treasurer - Investment of district funds - Expenditure of district funds	61-16.1: 2
61-16.1-09 Powers of water resource board	61-16.1: 3
61-16.1-09.1 Watercourses, bridges, and low water crossings	61-16.1: 5
61-16.1-09.2 Release of easements - Procedure	61-16.1: 6
61-16.1-10 Responsibilities and duties of water resource board	61-16.1: 7
61-16.1-11 Joint exercise of powers	61-16.1: 7
61-16.1-12 Scope of water resource board's extraterritorial contractual authority - Board may acquire property in adjoining states and provinces	61-16.1: 8
61-16.1-12.1 Water resource boards - Agreements with state or federal agencies for certain improvements	61-16.1: 8
61-16.1-13 [Repealed]	61-16.1: 9
61-16.1-14 Contracts for construction or maintenance of project	61-16.1: 9
61-16.1-15 Financing project through revenue bonds, general taxes, or special assessments - Apportionment of benefits	61-16.1: 9
61-16.1-16 Revenue bonds	61-16.1: 10
61-16.1-17 Financing of special improvements - Procedure	61-16.1: 10
61-16.1-18 Hearing - Notice - Contents	61-16.1: 10
61-16.1-19 Voting on proposed projects	61-16.1: 11
61-16.1-20 Voting right or powers of landowners	61-16.1: 11
61-16.1-21 Assessment of cost of project	61-16.1: 11
61-16.1-22 Assessment list to be published - Notice of hearing - Alteration of assessments - Confirmation of assessment list - Filing	61-16.1: 12
61-16.1-23 Appeal to state engineer	61-16.1: 12
61-16.1-24 When assessments may be made	61-16.1: 12
61-16.1-25 Financial reports - Liability for deficiencies	61-16.1: 13
61-16.1-26 Reassessment of benefits	61-16.1: 13
61-16.1-27 Correction of errors and mistakes in special assessments - Requirements governing	61-16.1: 14
61-16.1-28 Certification of assessments to county auditor	61-16.1: 14
61-16.1-29 Extension of special assessments on tax lists - Collection - Payment to district	61-16.1: 14

61-16.1-30	Lien of special assessment	61-16.1: 14
61-16.1-31	Foreclosure of tax lien on property when general and special assessment taxes are delinquent	61-16.1: 14
61-16.1-32	Collection of tax or assessment levied not to be enjoined or declared void - Exceptions	61-16.1: 15
61-16.1-33	Water resource board may apportion assessments for benefits of a project against a county or city or any tract of land benefited	61-16.1: 15
61-16.1-34	Warrants - When payable - Amounts - Interest - Interest coupons	61-16.1: 15
61-16.1-35	Warrants may be used in making payments on contract – Warrants payable out of fund on which drawn - May be used to pay special assessments	61-16.1: 16
61-16.1-36	Refunding special assessment warrants - Purposes for which such warrants may be issued - Payment of warrants	61-16.1: 16
61-16.1-37	Commission, state engineer, and water resource board shall encourage both structural and nonstructural alternatives	61-16.1: 16
61-16.1-38	Permit to construct or modify dam, dike, or other device required - Penalty - Emergency	61-16.1: 17
61-16.1-39	Dams or other devices constructed with a district shall come under control of a water resource board	61-16.1: 17
61-16.1-39.1	Petition for maintenance - Bond required	61-16.1: 17
61-16.1-39.2	Maintenance of project - Exception	61-16.1: 17
61-16.1-40	When dams constructed by federal agency under control of district	61-16.1: 18
61-16.1-40.1	Maintenance of federally constructed projects - Assessment district established	61-16.1: 18
61-16.1-41	[Repealed]	61-16.1: 18
61-16.1-41.1	Removal or placement of fill	61-16.1: 18
61-16.1-42	Drains along and across public roads and railroads	61-16.1: 18
61-16.1-43	Construction of bridges and culverts - Costs	61-16.1: 19
61-16.1-44	Culvert and pipe arch bids and acceptance	61-16.1: 19
61-16.1-45	Maintenance of drainage projects	61-16.1: 19
61-16.1-46	Establishing new drains in locations of invalid or abandoned drain	61-16.1: 20
61-16.1-47	Drain kept open and in repair by water resource board	61-16.1: 20
61-16.1-48	Assessment of costs of cleaning and repairing drains	61-16.1: 20
61-16.1-49	Petition for a lateral drain - Bond of petitioners	61-16.1: 20
61-16.1-50	Drains having a common outlet may be consolidated	61-16.1: 21
61-16.1-51	Removal of obstructions to drain - Notice and hearing – Appeal - Injunction - Definition	61-16.1: 21
61-16.1-52	[Repealed]	61-16.1: 22
61-16.1-53	Removal of a noncomplying dike or dam - Notice and hearing - Appeal - Injunction	61-16.1: 22

61-16.1-53.1	Appeal of board decisions - State engineer review - Closing of noncomplying dams, dikes, or other devices for water conservation, flood control, regulation, and watershed improvement.....	61-16.1: 22
61-16.1-54	Appeal from decision of water resource board - Undertaking - Jurisdiction.....	61-16.1: 24
61-16.1-55	[Repealed]	61-16.1: 24
61-16.1-56	[Repealed]	61-16.1: 24
61-16.1-57	[Repealed]	61-16.1: 24
61-16.1-58	Attorney general to assist boards - Employment of counsel.....	61-16.1: 24
61-16.1-59	Proceedings to confirm judicially contracts, special assessments, and other acts	61-16.1: 24
61-16.1-60	Authorization to organize association of water resource districts	61-16.1: 24
61-16.1-61	Water resource districts - Assumption of assets and liabilities of drain boards.....	61-16.1: 24
61-16.1-62	Validating organization and acts of water resource districts and county drain boards	61-16.1: 25
61-16.1-63	Penalty for violation of chapter	61-16.1: 25

CHAPTER 61-16.1

OPERATION OF WATER RESOURCE DISTRICTS

61-16.1-01. Legislative intent and purpose. The legislative assembly of North Dakota recognizes and declares that the general welfare and the protection of the lives, health, property, and the rights of all people of this state require that the management, conservation, protection, development, and control of waters in this state, navigable or nonnavigable, surface or subsurface, the control of floods, the prevention of damage to property therefrom, involve and necessitate the exercise of the sovereign powers of this state and are affected with and concern a public purpose. To realize these objectives it is hereby declared to be the policy of the state to provide for the management, conservation, protection, development, and control of water resources and for the prevention of flood damage in the watersheds of this state and thereby to protect and promote the health, safety, and general welfare of the people of this state.

The legislative assembly further recognizes the significant achievements that have been made in the management, conservation, protection, development, and control of our water and related land resources, and declares that the most efficient and economical method of accelerating these achievements is to establish water resource districts encompassing all of the geographic area of the state, and emphasizing hydrologic boundaries.

61-16.1-02. Definitions. In this chapter, unless the context or subject matter otherwise provides:

1. "Affected landowners" means landowners whose land is subject to special assessment or condemnation for a project.
2. "Assessment drain" means any natural watercourse opened, or proposed to be opened, and improved for the purpose of drainage, and any artificial drain of any nature or description constructed for the purpose of drainage, including dikes and appurtenant works, which are financed in whole or in part by special assessment. This definition may include more than one watercourse or artificial channel constructed for the purpose of drainage when the watercourses or channels drain land within a practical drainage area.
3. "Commission" means the state water commission.
4. "Conservation" means planned management of water resources to prevent exploitation, destruction, neglect, or waste.
5. "District" means a water resource district.
6. "Person" means any person, firm, partnership, association, corporation, limited liability company, agency, or any other private or governmental organization, which includes, but is not limited to, any agency of the United States, a state agency, or any political subdivision of the state.
7. "Project" means any undertaking for water conservation, flood control, water supply, water delivery, erosion control and watershed improvement, drainage of surface waters, collection, processing, and treatment of sewage, or discharge of sewage effluent, or any combination thereof, including incidental features of any such undertaking.
8. "Water resource board" means the water resource district's board of managers.

61-16.1-03. Water resource districts - Boundaries. Repealed by S.L. 1985, ch. 678, §

2.

61-16.1-04. Minutes, books, and records. The water resource board shall keep accurate minutes of its meetings and accurate records and books of account, clearly setting out and reflecting the entire operation, management, and business of the district. These books and records shall be kept at the principal office of the district or at such other regularly maintained office or offices of the district as shall be designated by the board, with due regard to the convenience of the district, its customers, and residents. The books and records shall be open to public inspection during reasonable business hours.

61-16.1-05. Bonds of treasurer and appointive officers. The treasurer of a district shall be bonded in the amount set by the water resource board but the bond shall not be less than one thousand dollars. Other district employees shall be bonded in any amount set by the board. Every officer or employee of whom a bond is required shall be deemed bonded with the state bonding fund upon notice of that appointment given to the state insurance commissioner by the secretary of the district. Upon notification by the state bonding fund of the premium required, the district treasurer shall remit the same.

61-16.1-06. District budget - Tax levy - Financing by special assessment. The fiscal year of the district begins January first and ends December thirty-first. The water resource board shall estimate the expenses of the district before October first of each year. Estimates of district expenses may include costs of rights of way, easements, or other interests in property deemed necessary for the construction, operation, and maintenance of any projects. The district budget may also include an amount necessary for future projects which are part of a master plan. Upon completion and adoption of a budget covering necessary expenses, the board shall send a copy of the budget to the county auditor of each county in the district. Each county auditor shall transmit the same to the board of county commissioners of that county. The board of county commissioners shall either disapprove the budget, amend and approve the budget as amended, or approve the budget as submitted and, if approved as amended or as submitted, the board shall, by resolution, levy and authorize and direct the county auditor to extend and spread upon the tax roll of the county or portion of the county in the district a tax not exceeding the limitation in section 57-15-26.6 in the same manner, and with the same effect, as general property taxes are extended and spread. Funds produced each year by the tax levy shall be available until expended, and if the tax levy in any year will not produce sufficient revenue to cover district expenses, a fund sufficient to pay the district expenses may be accumulated. The acquisition of rights of way, easements, and the construction, operation, and maintenance of a project in a district may, in the discretion of the water resource board, be financed in whole or in part by special assessments against property benefited by such project, or from revenues realized from general tax collections, or from net revenues to be derived from service charges to be imposed and collected for the services of the project, or any combination of such sources.

61-16.1-07. District may issue warrants in anticipation of taxes levied to pay current expenses. After a district has been established and organized and a water resource board has been appointed, the water resource board, for the purpose of paying current district expenses including per diem, compensation, and expenses of managers and wages or salaries of officers and employees, by resolution, may authorize and issue district warrants in anticipation of and pending collection and receipt of taxes levied. The warrants shall bear the rate of interest set by the board, which shall not exceed twelve percent per annum on those issues sold at private sale. There is no interest rate ceiling on warrants sold at public sale or to the state of North Dakota or any of its agencies or instrumentalities. The district treasurer shall keep a register in which to enter each warrant issued, showing the date and amount of each warrant, the date of payment, and the amount paid in redemption thereof. All warrants shall be paid in order of their presentation for payment to the district treasurer. The warrants shall be drawn to the claimant or bearer in the same manner as a county warrant and shall be signed by the chairman of the water resource board and countersigned by the treasurer of the district. The aggregate total amount of warrants issued in any year to pay current district expenses shall not exceed eighty percent of the district's tax levy for that year.

61-16.1-08. County treasurer to collect and remit taxes to district treasurer - Investment of district funds - Expenditure of district funds. The treasurer of each county in which a district, or a part of a district, is situated shall collect all district taxes and special

assessments together with any penalty and interest thereon in the same manner as county taxes are collected, and shall, within twenty days after the close of each month, pay to the treasurer of the district those taxes and assessments collected during the preceding month, and shall notify the secretary of the district of the payment. In June and December of each year, and as the county commission may otherwise require, the district treasurer shall report to each member of the water resource board the amount of money in the district treasury, the amount of receipts in the preceding month, and items and amounts of expenditures. At each regular meeting of the board the treasurer shall submit to the board a statement of the district's finances.

Each district may invest any money in the district treasury, including money in any sinking fund established for the purpose of providing for the payment of the principal or interest of any contract, bond, or other indebtedness or for any other purpose, not required for the immediate needs of the district, in accordance with chapter 21-04.

Funds of the district shall be paid out or expended only upon the authorization or approval of the water resource board and by check, draft, warrant, or other instrument in writing, signed by the treasurer, assistant treasurer, or any other officer, employee, or agent of the district authorized by the treasurer to sign on behalf of the treasurer. The authorization shall be in writing and filed with the secretary of the district.

61-16.1-09. Powers of water resource board. Each water resource board shall have the power and authority to:

1. Sue and be sued in the name of the district.
2. Exercise the power of eminent domain in the manner provided by title 32 for the purpose of acquiring and securing any rights, titles, interests, estates, or easements necessary or proper to carry out the duties imposed by this chapter, and particularly to acquire the necessary rights in land for the construction of dams, flood control projects, and other water conservation, distribution, and supply works of any nature and to permit the flooding of lands, and to secure the right of access to such dams and other devices and the right of public access to any waters impounded thereby. Provided, however, that when the interest sought to be acquired is a right of way for any project authorized in this chapter for which federal funds have been appropriated, the district, after making a written offer to purchase the right of way and depositing the amount of the offer with the clerk of the district court of the county wherein the right of way is located, may thereupon take immediate possession of the right of way, as authorized by section 16 of article I of the Constitution of North Dakota. Within thirty days after notice has been given in writing to the landowner by the clerk of the district court that a deposit has been made for the taking of a right of way as authorized in this subsection, the owner of the property taken may appeal to the district court by serving a notice of appeal upon the acquiring agency, and the matter must be tried at the next regular or special term of court with a jury unless a jury be waived, in the manner prescribed for trials under chapter 32-15.
3. Accept funds and property or other assistance, financial or otherwise, from federal, state, and other public or private sources for the purposes of aiding the construction or maintenance of water conservation, distribution, and flood control projects; and cooperate and contract with the state or federal government, or any department or agency thereof, or any municipality within the district, in furnishing assurances and meeting local cooperation requirements of any project involving control, conservation, distribution, and use of water.
4. Procure the services of engineers and other technical experts, and employ an attorney or attorneys to assist, advise, and act for it in its proceedings.
5. Plan, locate, relocate, construct, reconstruct, modify, maintain, repair, and control all dams and water conservation and management devices of every nature and water

channels, and to control and regulate the same and all reservoirs, artificial lakes, and other water storage devices within the district.

6. Maintain and control the water levels and the flow of water in the bodies of water and streams involved in water conservation and flood control projects within the district and regulate streams, channels, or watercourses and the flow of water therein by changing, widening, deepening, or straightening the same, or otherwise improving the use and capacity thereof.
7. Regulate and control water for the prevention of floods and flood damages by deepening, widening, straightening, or diking the channels or floodplains of any stream or watercourse within the district, and construct reservoirs or other structures to impound and regulate such waters.
8. Make rules and regulations concerning the management, control, regulation, and conservation of waters and prevent the pollution, contamination, or other misuse of the water resources, streams, or bodies of water included within the district.
9. Do all things reasonably necessary and proper to preserve the benefits to be derived from the conservation, control, and regulation of the water resources of this state.
10. Construct, operate, and maintain recreational facilities, including beaches, swimming areas, boat docking and landing facilities, toilets, wells, picnic tables, trash receptacles, and parking areas, and to establish and enforce rules and regulations for the use thereof.
11. Have, in addition to any powers provided in this chapter, the authority to construct an assessment drain in accordance with the procedures and provisions of chapter 61-21.
12. Acquire by lease, purchase, gift, condemnation, or other lawful means and to hold in its corporate name for its use and control both real and personal property and easements and rights of way within or without the limits of the district for all purposes authorized by law or necessary to the exercise of any other stated power.
13. Convey, sell, dispose of, or lease personal and real property of the district as provided by this chapter.
14. Authorize and issue warrants to finance construction of water conservation and flood control projects, assess benefited property for part or all of the cost of such projects, and require appropriations and tax levies to maintain sinking funds for construction warrants on a cash basis at all times.
15. Borrow money within the limitations imposed by this chapter for projects herein authorized and pledge security for the repayment of such loans.
16. Order or initiate appropriate legal action to compel the entity responsible for the maintenance and repair of any bridge or culvert to remove from under, within, and around such bridge or culvert all dirt, rocks, weeds, brush, shrubbery, other debris, and any artificial block which hinders or decreases the flow of water through such bridge or culvert.
17. Order or initiate appropriate legal action to compel the cessation of the destruction of native woodland bordering within two hundred feet [60.96 meters] of that portion of a riverbank subject to overflow flooding that will cause extensive property damage, or in the alternative, order, that, if such destruction is permitted, the party or parties responsible for the destruction must, when the board has determined that such destruction will cause excessive property damage from overflow flooding due to the erosion or blocking of the river channel, plant a shelterbelt which meets the

specifications of the board. In the event the native woodland within such area has already been destroyed, the board may, in its discretion, order the planting of a shelterbelt which, in the judgment of the board, will curtail the erosion or blocking of such river channel where overflow flooding has caused extensive property damage. For purposes of this subsection, the words "riverbank" and "river channel" relate to rivers as defined in the United States geological survey base map of North Dakota, edition of 1963. The provisions of this subsection shall not be construed to limit, impair, or abrogate the rights, powers, duties, or functions of any federal, state, or local entity to construct and maintain any flood control, irrigation, recreational, or municipal or industrial water supply project.

18. Petition any zoning authority established pursuant to chapter 11-33, 11-35, or 40-47 or section 58-03-13 to assume jurisdiction over a floodplain for zoning purposes when such zoning is required to regulate and enforce the placement, erection, construction, reconstruction, repair, and use of buildings and structures to protect and promote the health, safety, and general welfare of the public within a floodplain area. In the event such zoning authority fails to act or does not exist, the board may request the state water commission to assist it in a study to determine and delineate the floodplain area. Upon completion of such study, the board shall make suitable recommendations for the establishment of a floodplain zone to all zoning authorities and the governing bodies of all political subdivisions having jurisdiction within the floodplain area.
19. Plan, locate, relocate, construct, reconstruct, modify, extend, improve, operate, maintain, and repair sanitary and storm sewer systems, or combinations thereof, including sewage and water treatment plants, and regulate the quantity of sewage effluent discharged from municipal lagoons; and contract with the United States government, or any department or agency thereof, or any private or public corporation or limited liability company, the government of this state, or any department, agency, or political subdivision thereof, or any municipality or person with respect to any such systems.
20. Develop water supply systems, store and transport water, and provide, contract for, and furnish water service for domestic, municipal, and rural water purposes, irrigation, milling, manufacturing, mining, metallurgical, and any and all other beneficial uses, and fix the terms and rates therefor. Each district may acquire, construct, operate, and maintain dams, reservoirs, ground water storage areas, canals, conduits, pipelines, tunnels, and any and all works, facilities, improvements, and property necessary therefor.
21. Coordinate proposals for installation, modification, or construction of culverts and bridges in an effort to achieve appropriate sizing and maximum consistency of road openings. The department of transportation, railroads, counties, and townships shall cooperate with the districts in this effort. Each district shall also consider the possibility of incorporating appropriate water control structures, where appropriate, as a part of such road openings.
22. Plug abandoned water wells and participate in cost-sharing arrangements with water well owners to plug water wells to protect aquifers from pollution or depletion, maintain pressure, and prevent damage to surrounding property.
23. Have, in addition to any powers provided in this chapter, the authority to conduct weather modification operations in accordance with the procedures and provisions of chapter 61-04.1.

61-16.1-09.1. Watercourses, bridges, and low water crossings.

1. A water resource board may undertake the snagging, clearing, and maintaining of natural watercourses and the debrisment of bridges and low water crossings. The

board may finance the project in whole or in part with funds raised through the collection of a special assessment levied against the land and premises benefited by the project. The benefits of a project must be determined in the manner provided in section 61-16.1-17. Revenue from an assessment under this section may not be used for construction of a drain or reconstruction or maintenance of an existing assessment drain. Any question as to whether the board is maintaining a natural watercourse or is constructing a drain or reconstructing or maintaining an existing assessment drain must be determined by the state engineer. All provisions of this chapter apply to assessments levied under this section except:

- a. An assessment may not exceed fifty cents per acre [.40 hectare] annually on agricultural lands and may not exceed fifty cents annually for each five hundred dollars of taxable valuation of nonagricultural property; and
 - b. If the assessment is for a project costing less than one hundred thousand dollars, no action is required for the establishment of the assessment district or the assessments except the board must approve the project and assessment by a vote of two-thirds of the members and the board of county commissioners of the county in which the project is located must approve and levy the assessments to be made by a vote of two-thirds of its members.
 - (1) If a board that undertakes a project finds that the project will benefit lands outside water resource district boundaries, the board shall provide notice to the water resource board where the benefited lands are located together with the report prepared under section 61-16.1-17.
 - (2) The board of each water resource district containing lands benefited by a project must approve the project and assessment by a vote of two-thirds of its members. The board of county commissioners in each county that contains lands benefited by a project must approve and levy the assessment to be made by a vote of two-thirds of its members.
 - (3) If a project and assessment is not approved by all affected water resource boards and county commission boards, the board of each water resource district and the board of county commissioners of each county shall meet to ensure that all common water management problems are resolved pursuant to section 61-16.1-10. In addition, the water resource board that undertakes the project may proceed with the project if the board finances the cost of the project and does not assess land outside the boundaries of the district.
 - c. All revenue from an assessment under this section must be exhausted before a subsequent assessment covering any portion of lands subject to a prior assessment may be levied.
2. Before an assessment may be levied under this section, a public hearing must be held and attended by a quorum of the affected water resource boards and a quorum of the affected boards of county commissioners. The hearing must be preceded by notice as to date, time, location, and subject matter published in the official newspaper in the county or counties in which the proposed assessment is to be levied. The notice must be published at least ten days but not more than thirty days before the public hearing.

61-16.1-09.2. Release of easements - Procedure. When it deems such action to be in the best interests of the district or other political subdivision, a water resource board or governing body of another political subdivision may release easements assigned to it from the state for the construction, operation, and maintenance of dams, along with access to the dams, if the dams are no longer useful.

61-16.1-10. Responsibilities and duties of water resource board. Each water resource board shall:

1. Meet jointly with other water resource boards within a common river basin at least twice each year at times and places as mutually agreed upon for the purpose of reviewing and coordinating efforts for the maximum benefit of the entire river basin.
2. Cooperate with other water resource boards of a common river basin and provide mutual assistance to the maximum extent possible.
3. Exercise jointly with other water resource districts within a river basin to effectively resolve the significant and common water resource management problem or problems of the river basin or region and to jointly develop a comprehensive plan for the river basin or region.
4. Encourage all landowners to retain water on the land to the maximum extent possible in accordance with sound water management policies, and carry out to the maximum extent possible the water management policy that upstream landowners and districts that have artificially altered the hydrologic scheme must share with downstream landowners the responsibility of providing for proper management and control of surface waters.
5. Address and consider fully in the planning of any surface water project the downstream impacts caused by the project. A determination of whether to proceed with the construction of a project shall be based on the following principles:
 - a. Reasonable necessity of the project.
 - b. Reasonable care to be taken to avoid unnecessary injury by fully considering all alternatives.
 - c. Consideration of whether the utility or benefit accruing from the project reasonably outweighs the adverse impacts resulting from the project.
6. Require that appropriate easements be obtained in accordance with applicable state and federal law when projects will cause an adverse impact to lands of other landowners.

61-16.1-11. Joint exercise of powers.

1. Two or more districts may, by agreement, jointly or cooperatively exercise any power which is authorized a board by this title. The agreement shall state its purpose and the powers to be exercised, and shall provide for the method by which the power or powers shall be exercised. When the agreement provides for the use of a joint water resource board, the joint board shall be representative of the boards which are parties to the agreement. Notwithstanding other provisions of law, the agreement may specify the number, composition, terms, or qualifications of the members of the joint board. A joint board created under this section is a political subdivision of the state.
2. The districts which are parties to such an agreement may provide for disbursements from their individual budgets to carry out the purpose of the agreement. In addition, a joint board established pursuant to this section may adopt, by resolution, on or before July first of each year, a budget showing estimated expenses for the ensuing fiscal year and the proposed contributions of each member district as determined by the agreement. The boards of the member districts then shall levy by resolution a tax not to exceed two mills upon the taxable valuation of the real property within each district within the river basin or region subject to the joint agreement. The levy may be in excess of any other levy authorized for a district.

3. The proceeds of one-half of this levy shall be credited to the joint board's administrative fund and shall be used for regulatory activities and for the construction and maintenance of projects of common benefit to the member districts. The remainder shall be credited to the construction funds of the joint board and shall be used for the construction and maintenance of projects of common benefit to more than one district.
4. Funds may be paid to and disbursed by the joint board as agreed upon, but the method of disbursement shall agree as far as practicable with the method provided by law for the disbursement of funds by individual districts. Contracts let and purchases made under the agreements shall conform to the requirements applicable to contracts and purchases by individual districts. The joint board shall be accountable for all funds and reports of all receipts and disbursements to the state water commission in a manner prescribed by the commission.
5. The agreement may be continued for a definite term or until rescinded or terminated in accordance with its terms. The agreement shall provide for the disposition of any property required as the result of a joint or cooperative exercise of powers, and the return of any surplus moneys in proportion to contributions of the several contracting districts after the purpose of the agreement has been completed.
6. Residence requirements for holding office in a district shall not apply to any officer appointed to carry out any agreement.
7. This section does not dispense with procedural requirements of any other statute providing for the joint or cooperative exercise of any governmental power.

61-16.1-12. Scope of water resource board's extraterritorial contractual authority - Board may acquire property in adjoining states and provinces. A water resource board shall have the right, power, and authority to enter into contracts or other arrangements for water conservation, water supply, flood control, or other authorized projects with the United States government or any department thereof, with the Canadian government or any department thereof or any of its provinces or municipalities, with persons, railroads, other corporations, or limited liability companies, with public corporations, and state governments of this or other states, with drainage, water resource, conservation, conservancy, or improvement districts, or other such districts in this or other states. Such contracts or arrangements can provide for cooperation or assistance in planning, constructing, maintaining, and operating such projects and in making investigations and reports thereon, and for the carrying out of any other provision of this chapter. A water resource board may purchase, lease, or acquire land or other property in adjoining states or provinces to secure outlets to construct and maintain dikes or dams, or for other purposes authorized by this chapter and may let contracts or spend money for securing such outlets or works in adjoining states or provinces. No water resource board of any district shall have the right, power, or authority to connect boundary waters having different natural outlets by artificial means so that the waters of one may be discharged into the other.

61-16.1-12.1. Water resource boards - Agreements with state or federal agencies for certain improvements. A water resource board may enter into an agreement with any federal or state agency, or any combination thereof, for the construction of a project, under the terms of which the contract for the work is to be let by the federal or state agency or any combination thereof. If under the terms of the agreement at least fifty percent of the total cost of constructing the project is to be paid by the agency or agencies and if any portion of the cost of the project is to be paid by the levy of special assessments, the board may by resolution create a project assessment district for the purpose of levying special assessments to finance the amount that the district will be obligated to pay in accordance with the agreement, over and above any other funds which are on hand and properly available for that purpose. The assessment district must be of a size and form as to include all properties which in the judgment of the board, after consultation with a registered engineer designated by the board for that purpose, will be benefited by the construction of the proposed project, and the board shall direct the engineer to prepare a map showing the boundaries of the proposed assessment district. The board shall by

resolution declare the necessity of the project, set forth the general nature and purpose of the proposed project, estimate the total cost of the project, and the approximate amount or fraction of the cost which the district will be obligated to pay under the agreement, and the fact that this amount, or a lesser amount as the board may specify, is proposed to be paid by the levy of special assessments upon property within the assessment district determined to be benefited by the project. The board shall cause the resolution of necessity together with a copy of the map showing the boundaries of the assessment district and a notice stating the date and time by which the owners of any property liable to be specially assessed for the proposed project must file their votes on the proposed project with the secretary of the board to be mailed to each landowner affected by the proposed project as determined by the tax rolls of the county in which the affected property is located. The board may send the material by certified mail or by regular mail attested by an affidavit of mailing signed by the attorney or secretary of the board. The notice must also set forth the time and place where the board shall meet to determine whether the project is approved. The notice must also be published once in a newspaper of general circulation in the district and once in the official county newspaper of each county in which the benefited lands are located. Within five days after the first mailing of the resolution the board shall cause a copy of the resolution to be personally served upon any county, city, or township, in its corporate capacity which may be benefited directly or indirectly from the construction of the proposed project and upon any county which may become liable for any deficiency in the fund to be created for the project, by delivering a copy of the resolution to any member of the governing body thereof. The meeting must be held not less than thirty days after the mailing of the resolution, at which time the board shall determine whether the project is approved. If the board finds that fifty percent or more of the total votes filed are against a proposed project, then the board may not proceed further with the proposed project. If the board finds that less than fifty percent of votes filed are against the proposed project, the board may proceed with the project. In any assessment district created under this section the board may dispense with all other requirements of this chapter, other than those stated in this section. After the contract for the work has been let, the board may issue warrants on the fund of the project for the total amount of the cost thereof, and the board, without holding the hearing required by section 61-16.1-18, shall proceed to determine and levy any assessments against property benefited by the project and prepare an assessment list all in accordance with the procedures required by sections 61-16.1-21 through 61-16.1-24. The provisions of sections 61-16.1-25 through 61-16.1-36 are applicable to the assessments and the special warrants issued pursuant to this section.

61-16.1-13. Master plans. Repealed by S.L. 1985, ch. 678, § 2.

61-16.1-14. Contracts for construction or maintenance of project. If the cost of construction or maintenance of a project does not exceed the amount provided for construction of a public improvement under section 48-01.2-02, the work may be done on a day work basis or a contract may be let without being advertised. In cases where the cost of the construction or maintenance exceeds the amount provided for construction of a public improvement under section 48-01.2-02, the board must let a contract in accordance with chapter 48-01.2.

61-16.1-15. Financing project through revenue bonds, general taxes, or special assessments - Apportionment of benefits. A water resource board shall have the authority, either upon request or by its own motion, to acquire needed interest in property and provide for the cost of construction, alteration, repair, operation, and maintenance of a project through issuance of improvement warrants or with funds raised by special assessments, general tax levy, issuance of revenue bonds, or by a combination of general ad valorem tax, special assessments, and revenue bonds. Whenever a water resource board decides to acquire property or interests in property to construct, operate, alter, repair, or maintain a project with funds raised in whole or in part through special assessments, such assessments shall be apportioned to and spread upon lands or premises benefited by the project in proportion to and in accordance with benefits accruing thereto. The board shall assess the proportion of the cost of the project, or the part of the cost to be financed with funds raised through levy and collection of special assessments which any lot, piece, or parcel of land shall bear in proportion to the benefits accruing thereto and any county, city, or township which is benefited thereby. In determining assessments the water resource board shall carry out to the maximum extent possible the water management policy of

this chapter that upstream landowners must share with downstream landowners the responsibility to provide for the proper management of surface waters.

61-16.1-16. Revenue bonds. Each district shall have the power and authority to issue revenue bonds, not exceeding an aggregate total outstanding of ten million dollars, for the purpose of financing construction of projects and incidental facilities authorized by this chapter. Issuance of revenue bonds must be approved by two-thirds of all of the members of the water resource board. The district shall pledge sufficient revenue from any revenue-producing facility constructed with the aid of revenue bonds for the payment of principal and interest on the bonds and shall establish rates for the facilities at a sufficient level to provide for the operation of such facilities and for the bond payments. Revenue bonds shall not be a general obligation of any county and shall not be secured by property taxes.

61-16.1-17. Financing of special improvements - Procedure. When it is proposed to finance in whole or in part the construction of a project with funds raised through the collection of special assessments levied against lands and premises benefited by construction and maintenance of such project, the water resource board shall examine the proposed project, and if in its opinion further proceedings are warranted, it shall adopt a resolution and declare that it is necessary to construct and maintain the project. The resolution shall briefly state the nature and purpose of the proposed project and shall designate a registered engineer to assist the board. For the purpose of making examinations or surveys, the board or its employees, after written notice to each landowner, may enter upon any land on which the proposed project is located or any other lands necessary to gain access. The engineer shall prepare profiles, plans, and specifications of the proposed project and estimates of the total cost thereof. The estimate of costs prepared by the engineer shall include acquisition of right of way and shall be in sufficient detail to allow the board to determine the probable share of the total costs that will be assessed against each of the affected landowners in the proposed project assessment district.

61-16.1-18. Hearing - Notice - Contents. Upon the filing of the engineer's report provided for in section 61-16.1-17, and after satisfying the requirements of section 61-16.1-21, the water resource board shall fix a date and place for public hearing on the proposed project. The place of hearing must be in the vicinity of the proposed project and must be convenient and accessible for the majority of the landowners subject to assessment for the project or whose property is subject to condemnation for the proposed project. The board shall cause a complete list of the benefits and assessments to be made, setting forth each county, township, or city assessed in its corporate capacity as well as each lot, piece, or parcel of land assessed, the amount each is benefited by the improvement and the amount assessed against each. At least ten days before the hearing, the board shall file with the county auditor of each county or counties in which the project is or will be located the list showing the percentage assessment against each parcel of land benefited by the proposed project and the approximate assessment in terms of money apportioned thereto. Notice of the filing must be included in the notice of hearing. Notices of the hearing must contain a copy of the resolution of the board as well as the time and place where the board will conduct the hearing. The notice of hearing must specify the general nature of the project as finally determined by the engineer and the board. The notice of hearing must also specify when and where votes concerning the proposed project may be filed. The assessment list showing the percentage assessment against each parcel of land benefited by the proposed project and the approximate assessment in terms of money apportioned thereto, along with a copy of the notice of the hearing, must be mailed to each affected landowner at the landowner's address as shown by the tax rolls of the county or counties in which the affected property is located. The board may send the assessment list and notice by regular mail attested by an affidavit of mailing signed by the attorney or secretary of the board. The board shall cause the notice of hearing to be published once a week for two consecutive weeks in the newspaper or newspapers of general circulation in the area in which the affected landowners reside and in the official county newspaper of each county in which the benefited lands are located. The date set for the hearing must not be less than twenty days after the mailing of the notice. A record of the hearing must be made by the board, including a list of affected landowners present in person or by agent, and the record must be preserved in the minutes of the meeting. Affected landowners, and the governing body of any county, township, or city to be assessed, must be informed at the

hearing of the probable total cost of the project and their individual share of the cost and the portion of their property, if any, to be condemned for the project.

61-16.1-19. Voting on proposed projects. At the hearing, the affected landowners, and any county, township, or city to be assessed, must also be informed when and where votes concerning the proposed project may be filed. Affected landowners, and the governing body of any county, township, or city to be assessed, have thirty days after the date of the hearing to file their votes with the secretary of the water resource board concerning the project. Once the deadline for filing votes has been reached, no more votes may be filed and no person may withdraw a vote. Any withdrawal of a vote concerning the proposed project before that time must be in writing. When the votes have been filed and the deadline for filing votes has passed, the board shall immediately determine whether the project is approved. If the board finds that fifty percent or more of the total votes filed are against the proposed project, then the vote constitutes a bar against proceeding further with the project. If the board finds that the number of votes filed against the proposed project is less than fifty percent of the votes filed, the board shall issue an order establishing the proposed project and may proceed, after complying with the requirements of sections 61-16.1-21 and 61-16.1-22, to contract or provide for the construction or maintenance of the project in substantially the manner and according to the forms and procedure provided in title 40 for the construction of sewers within municipalities. The board may enter into an agreement with any federal or state agency under the terms of which the contract for the project is to be let by the federal agency, the state agency, or a combination thereof. In projects where there is an agreement that a party other than the board will let the contract, the board may dispense with all of the requirements of title 40. Upon making an order establishing or denying establishment of a project, the board shall publish notice of the order in a newspaper of general circulation in the area in which the affected landowners reside and in the official county newspaper of each county in which the benefited lands are located. Any right of appeal begins to run on the date of publication of the notice. As used in this section, "board" means water resource board.

61-16.1-20. Voting right or powers of landowners. In order that there may be a fair relation between the amount of liability for assessments and the power of objecting to the establishment of a proposed project, the voting rights of affected landowners on the question of establishing the project are as provided in this section. The landowner or landowners of tracts of land affected by the project have one vote for each dollar of assessment that the land is subject to or one vote for each dollar of the assessed valuation of land condemned for the project, as determined in accordance with title 57. The governing body of any county, township, or city to be assessed also has one vote for each dollar of assessment against such county, township, or city. There may be only one vote for each dollar of assessment, regardless of the number of owners of such tract of land. Where more than one owner of such land exists, the votes must be prorated among them in accordance with each owner's property interest. A written power of attorney authorizes an agent to protest a project on behalf of any affected landowner or landowners.

61-16.1-21. Assessment of cost of project. Whenever the water resource board proposes to make any special assessment under the provisions of this chapter, the board, prior to the hearing required under section 61-16.1-18, shall inspect any and all lots and parcels of land, which may be subject to assessment and shall determine from the inspection the particular lots and parcels of lands which, in the opinion of the board, will be especially benefited by the construction of the work for which the assessment is made and shall assess the proportion of the total cost of acquiring right of way and constructing and maintaining such improvement in accordance with benefits received but not exceeding such benefits, against:

1. Any county, township, or city, in its corporate capacity, which may be benefited directly or indirectly thereby.
2. Any lot, piece, or parcel of land which is directly benefited by such improvement.

In determining benefits the board shall consider, among other factors, property values, degree of improvement of properties, productivity, and the water management policy as expressed in

section 61-16.1-15. Property belonging to the United States shall be exempt from such assessment, unless the United States has provided for the payment of any assessment which may be levied against its property for benefits received. Benefited property belonging to counties, cities, school districts, park districts, and townships shall not be exempt from such assessment and political subdivisions whose property is so assessed shall provide for the payment of such assessments, installments thereof, and interest thereon, by the levy of taxes according to law. Any county, township, or city assessed in its corporate capacity for benefits received shall provide for the payment of such assessments, installments thereof, and interest thereon from its general fund or by levy of a general property tax against all the taxable property therein in accordance with law. No tax limitation provided by any statute of this state shall apply to tax levies made by any such political subdivision for the purpose of paying any special assessments made in accordance with the provisions of this chapter. There shall be attached to the list of assessments a certificate signed by a majority of the members of the board certifying that the same is a true and correct assessment of the benefit therein described to the best of their judgment and stating the several items of expense included in the assessment.

61-16.1-22. Assessment list to be published - Notice of hearing - Alteration of assessments - Confirmation of assessment list - Filing. After entering an order establishing the project, the water resource board shall cause the assessment list to be published once each week for two successive weeks in the newspaper or newspapers of general circulation in the district and in the official county newspaper of each county in which the benefited lands are located together with a notice of the time when, and place where, the board will meet to hear objections to any assessment by any interested party, or an agent or attorney for that party. The board also shall mail a copy of the notice to each affected landowner at the landowner's address as shown by the tax rolls of the county or counties in which the affected property is located. The date set for the hearing may not be less than twenty days after the mailing of the notice. At the hearing, the board may make such alterations in the assessments as in its opinion may be just and necessary to correct any error in the assessment but must make the aggregate of all assessments equal to the total amount required to pay the entire cost of the work for which the assessments are made, or the part of the cost to be paid by special assessment. An assessment may not exceed the benefit as determined by the board to the parcel of land or political subdivision assessed. The board shall then confirm the assessment list and the secretary shall attach to the list a certificate that the same is correct as confirmed by the board and shall file the list in the office of the secretary.

61-16.1-23. Appeal to state engineer. After the hearing provided for in section 61-16.1-22, affected landowners and any political subdivision subject to assessment, having not less than twenty-five percent of the possible votes, as determined by section 61-16.1-20, who believe that the assessment had not been fairly or equitably made, or that the project is not properly located or designed, may appeal to the state engineer by petition, within ten days after the hearing on assessments, to make a review of the assessments and to examine the location and design of the proposed project. Upon receipt of such petition the state engineer shall examine the lands assessed and the location and design of the proposed project, and if it appears that the assessments have not been made equitably, the state engineer may proceed to correct the same, and the state engineer's correction and adjustment of said assessment is final. Should it appear that, in the judgment of the state engineer, the project has been improperly located or designed, the state engineer may order a relocation and redesign. Such relocation and redesign must be followed in the construction of the proposed project. Upon filing a bond for two hundred fifty dollars with the board for the payment of the costs of the state engineer in the matter, any landowner or political subdivision who or which claims that the landowner or political subdivision will receive no benefit at all from the construction of a new project may appeal to the state engineer within ten days after the hearing on assessments, the question of whether there is any benefit. The state engineer may not determine the specific amount of benefit upon an appeal by an individual landowner or political subdivision, but shall only determine if there is any benefit to the landowner or political subdivision, and the determination of the state engineer upon such question is final.

61-16.1-24. When assessments may be made. After the requirements of this chapter have been satisfied and a contract and bond for any work for which a special assessment is to be

levied have been approved by the water resource board, the board may direct special assessments to be levied for the payment of appropriate costs, and the secretary shall certify to the board the items of total cost to be paid by special assessments so far as they have been ascertained. The certificate shall include the estimated construction cost under the terms of any contract, a reasonable allowance for cost of extra work which may be authorized under the plans and specifications, acquisition of right of way, engineering, fiscal agents' and attorneys' fees for any services in connection with the authorization and financing of the improvement, cost of publication of required notices, and printing of improvement warrants, cost necessarily paid for damages caused by such improvement, interest during the construction period, and all expenses incurred in making the improvement and levy of assessments.

In no event shall any contract or contracts be awarded which exceed, by twenty percent or more, the estimated cost of the project as presented to and approved by the affected landowners.

61-16.1-25. Financial reports - Liability for deficiencies. In June and December of each year and as otherwise required by the county commission appointing the managers of the district, the district treasurer shall report to the water resource board in writing the amount of money in the treasury, the receipts, if any, in the preceding period and the amount and items of expenditure during that period. The report shall be verified and filed with the secretary of the district. A verified copy of the report shall also be filed in the office of the county auditor of each county in which the district lies and shall be open to public inspection.

During the month of January of each year the water resource board shall prepare a complete statement of the condition of the finances of the district for the past year and shall cause the same to be filed with the county auditor of each county in which the district lies on or before February first next following. Such statement shall show separately, and in detail, the condition and resources of each and every assessment fund for the payment of project warrants of the district, including the amount of any anticipated deficit and the apportionment thereof. At its February meeting next following the filing of the statement of condition of any district, the board of county commissioners shall examine the statement and make inquiry regarding same to determine whether or not the district has defaulted or may soon default on payment of its financial obligations as the same become due.

Whenever all special assessments collected for a project are insufficient to pay the special assessment warrants issued against such project, coming due within the following thirteen months, with interest, the board of county commissioners of each of the counties wherein the district lies shall advance to the district project warrant fund an amount sufficient to pay the deficiency attributable to benefited property in each county. If it appears to the board at any time that a deficiency exists or is likely to occur within one year in such project warrant fund for the payment of principal or interest due or to become due on such warrants, the board of county commissioners of each of the counties wherein the district lies, in order to forestall imminent deficiency in such fund or to promptly restore the ability of such fund to pay principal and interest punctually as the same become due, shall advance to such project fund the amount necessary to cover the anticipated deficiency attributable to benefited property in such county. In order to make such advances, the board of county commissioners of each of the counties shall levy a general tax upon the taxable property in the county, and may issue certificates of indebtedness against levies so made, or shall pay such advances from its general fund. Advances made by the county or counties shall be obligations of the district to be met out of any surplus in the district project warrant fund, and future district budgets and tax levies for the district after provision has been made for necessary current expenses. No tax limitation provided by any statute of this state shall apply to tax levies made by any county for the purpose of making any advances in accordance with the provisions of this section.

61-16.1-26. Reassessment of benefits. The water resource board may hold at any time or, upon petition of any affected landowner or political subdivision which has been assessed after a project has been in existence for at least one year, shall hold a hearing for the purpose of determining the benefits of such project to each tract of land affected. At least ten days' notice of the hearing must be given by publication in the newspaper or newspapers having general

circulation in the district and in the official county newspaper of each county in which the benefited lands are located and by mailing notice thereof by ordinary mail to each owner of land whose assessment is proposed to be raised as determined by the records of the recorder or county treasurer. The provisions of this chapter governing the original determination of benefits and assessment of costs apply to any reassessment of benefits carried out under this section. The board may not be forced to make such reassessment more than once every ten years, nor may any assessment or balance thereof supporting a project fund be reduced or impaired by reassessment or otherwise so long as bonds payable out of such fund remain unpaid and moneys are not available in such fund to pay all such bonds in full, with interest. Costs of maintenance must be prorated in accordance with any plan for reassessment of benefits that has been adopted.

61-16.1-27. Correction of errors and mistakes in special assessments - Requirements governing. If mathematical errors or other such mistakes occur in making any assessment resulting in a deficiency in that assessment, the board shall cause additional assessments to be made in a manner substantially complying with chapter 40-26 as it relates to special assessments.

61-16.1-28. Certification of assessments to county auditor. When a water resource board, by resolution, has caused special assessments to be levied to cover the cost of constructing a project, the board shall determine the rate of interest unpaid special assessments shall bear, which rate shall not exceed one and one-half percent above the warrant rate. Interest on unpaid special assessments shall commence on the date the assessments are finally confirmed by the board. Special assessments may be certified and made payable in equal annual installments, the last of which shall be due and payable not more than thirty years after date of the warrants to be paid. The secretary of the district shall certify to the county auditor of the county in which the district is situated, or if the district embraces more than one county, to the county auditor of each county in which district lands subject to such special assessments are situated, the total amount assessed against such lands in that county and the proportion or percentage of such amount assessed against each piece, parcel, lot, or tract of land. The secretary of the district shall also file with the county auditor of each county in which district lands lie a statement showing the cost of the project, the part thereof, if any, which will be paid out of the general taxes, and the part to be financed by special assessments. Funds needed to pay the cost of maintaining a project may be raised in the same manner as funds were raised to meet construction costs. If the project was financed in whole or in part through the use of special assessments, the water resource board shall prorate the costs of maintaining projects in the same proportion as were the original costs of construction or, in the event a reassessment of benefits has been adopted, the costs shall be prorated in accordance with the reassessment of benefits as authorized by section 61-16.1-54.

61-16.1-29. Extension of special assessments on tax lists - Collection - Payment to district. The county auditor of each county shall extend the special assessments certified to the county auditor on the tax list of the district for the current year and such assessments, with interest and penalties, if any, shall be collected by the county treasurer as general taxes are collected and shall be paid to the treasurer of the district.

61-16.1-30. Lien of special assessment. A special assessment imposed by a district, together with interest and penalties which accrue thereon, shall become a lien upon the property on which the assessment is levied from the time the assessment list is approved by the water resource board until the assessment is fully paid. Such liens shall have precedence over all other liens except general tax liens and shall not be divested by any judicial sale. No mistake in the description of the property covered by the special assessment lien or in the name of the owner of such property shall defeat the lien if the assessed property can be identified by the description in the assessment list. This chapter shall be considered notice to all subsequent encumbrancers of the priority of special assessments imposed under this chapter.

61-16.1-31. Foreclosure of tax lien on property when general and special assessment taxes are delinquent. Special assessments imposed under this chapter shall become due and delinquent and shall be subject to penalties and nonpayment at the same date

and rates as first installments of real estate taxes at the same time and in the same manner as provided in title 57.

If there is no delinquent general property tax against a tract or parcel of land and it is foreclosed for special assessments alone, the notice of foreclosure of tax lien shall state that the foreclosure is for special assessments and a tax deed in such case shall be issued in the usual course of procedure.

61-16.1-32. Collection of tax or assessment levied not to be enjoined or declared void - Exceptions. The collection of any tax or assessment levied or ordered to be levied to pay for the location and construction of any project under the provisions of this chapter shall not be enjoined perpetually or absolutely declared void by reason of any of the following:

1. Any error of any officer or board in the location and establishment thereof.
2. Any error or informality appearing in the record of the proceedings by which any project was established.
3. A lack of any proper conveyance or condemnation of the right of way.

The court in which any proceeding is brought to reverse or declare void the proceedings by which any project has been established, or to enjoin the tax levied to pay therefor, on application of either party, shall order examination of the premises, or survey of the same, or both, as may be deemed necessary. The court, on a final hearing, shall enter an order which is just and equitable, and may order the tax or any part thereof to remain on the tax lists for collection, or if the tax were paid under protest, may order, if justice requires, the whole or any part thereof to be refunded. The costs of such proceedings shall be apportioned among the parties as justice may require.

61-16.1-33. Water resource board may apportion assessments for benefits of a project against a county or city or any tract of land benefited. Whenever a water resource board discovers or ascertains that the county, a township, or city therein, or that any tract, parcel, or piece of land is being benefited by a project and that the county or such township, municipality, tract, piece, or parcel of land was not included in the project area assessed for the cost of construction and maintenance of the project when established, the board shall commence proceedings for reassessment of lands originally assessed for the cost of establishing and constructing such project and shall apportion and assess the part of the balance remaining unpaid, if any, of the cost of such project, and the expense of maintenance, which such county, township, or city and each tract of land found benefited thereby should bear.

Before making such reassessment or reapportionment of benefits, the board shall hold a hearing for the purpose of determining the benefits of the project to the county, such township, or city and to each tract, piece, or parcel of land being benefited. At least ten days' notice of the hearing shall be given by publication in the newspaper or newspapers having general circulation in the county and by mailing notice thereof to each owner of land assessed for the cost of construction and maintenance when the project was established, and by mailing such notice to the governing body of the county, township, municipality, and to the owner, as determined by the records in the office of the recorder or county treasurer of each tract, piece, or parcel of land found to be benefited since the establishment of the project. The provisions of this chapter governing the original determination of benefits and assessment of costs shall apply to the reassessment and assessment of benefits carried out under the provisions of this section.

61-16.1-34. Warrants - When payable - Amounts - Interest - Interest coupons. A district may, at any time after entering into a contract for a project to be financed in whole or in part by special assessments, issue temporary and definitive warrants on the project fund, created for that purpose, in the manner and subject to the limitations prescribed in section 40-24-19. If the warrants are issued to finance a sewer or water project, the net revenues derived from the imposition of service charges to be imposed and collected with respect thereto as provided in section 40-22-16 may be pledged to payment of those warrants, except that the first maturity

date of any such warrant shall not be less than two years from the date of issuance. Warrants issued under this section shall be in such amounts as in the judgment of the water resource board will be necessary for the project. The warrants shall bear interest at a rate or rates and be sold at a price resulting in an average net interest cost not exceeding twelve percent per annum if sold at private sale. There is no interest rate ceiling on warrant issues sold at public sale or to the state of North Dakota or any of its agencies or instrumentalities. Coupons evidencing the interest for each year or half year, as the case may be, may be attached to the warrants. The warrants shall state upon their face the purpose for which they are issued and the project fund from which they are payable and shall be signed by the chairman of the water resource board and countersigned by the secretary of the district. The warrants shall be payable serially in such amounts as the board determines, extending over a period of not more than thirty years.

61-16.1-35. Warrants may be used in making payments on contract - Warrants payable out of fund on which drawn - May be used to pay special assessments. Improvement warrants may be used in making payments on contracts for construction of the project for which the special assessment fund was created, or may be sold for cash at not less than ninety-eight percent of par and accrued interest, and the proceeds thereof, less accrued interest, shall be credited to the construction account of such fund and shall be used exclusively to pay such contracts and construction costs. Any balance remaining in any construction account after completion of a project shall be transferred to the sinking fund account of the assessment fund. The treasurer of the district shall pay special assessment warrants and any interest coupons attached thereto as they mature and are presented for payment out of the fund on which they are drawn and shall cancel the warrants and any coupons when paid.

61-16.1-36. Refunding special assessment warrants - Purposes for which such warrants may be issued - Payment of warrants. Any district having outstanding special assessment warrants, payable in whole or in part out of collections from special assessments, which are past due or which are redeemable, either at the option of the district or with the consent of the warrant holders, may issue refunding special assessment warrants or bonds if there is not sufficient money in the project fund against which such warrants are drawn to pay the same. The issuance of refunding warrants or bonds shall be authorized by resolution of the water resource board. The resolution shall describe the warrants to be refunded and the amount and maturity thereof. Refunding warrants may be issued for any of the following purposes:

1. Extend the maturities of warrants payable in whole or in part by special assessments.
2. Reduce the interest on such warrants.
3. Equalize the general property tax which the district may be, or may become, obligated to levy in order to cover deficiencies in the fund against which warrants were issued.

Refunding warrants or bonds shall bear such date, be in such date, be in such denominations, and shall mature serially within such time, not exceeding thirty years from date of issuance, as the water resource board shall determine. The average rate of interest on such warrants shall not exceed the average rate of interest on refunded warrants.

The treasurer of the district shall pay special assessment warrants, and the interest coupons attached thereto, as they mature and are presented for payment out of the fund against which they are drawn and shall cancel the warrants when paid.

Any deficiency in any fund created for the payment of district warrants payable in whole or in part out of collections of special assessment taxes shall be the general obligation of the water resource district.

61-16.1-37. Commission, state engineer, and water resource board shall encourage both structural and nonstructural alternatives. The commission, state engineer, and the appropriate water resource board shall encourage both structural and nonstructural

solutions to water management problems within the district by federal and state agencies, private individuals, public and private corporations, and limited liability companies, and shall lend their aid, counsel, and assistance to any such solutions. All structural alternatives, including dams, dikes, drains, and other works, whether constructed by public authorities or private persons, unless specifically exempted therefrom, shall be subject to all the provisions of this chapter.

61-16.1-38. Permit to construct or modify dam, dike, or other device required - Penalty - Emergency. No dikes, dams, or other devices for water conservation, flood control regulation, watershed improvement, or storage of water which are capable of retaining, obstructing, or diverting more than fifty acre-feet [61674.08 cubic meters] of water or twenty-five acre-feet [30837.04 cubic meters] of water for a medium-hazard or high-hazard dam, may be constructed within any district except in accordance with the provisions of this chapter. An application for the construction of any dike, dam, or other device, along with complete plans and specifications, must be presented first to the state engineer. Except for low-hazard dams less than ten feet [3.05 meters] in height, the plans and specifications must be completed by a professional engineer registered in this state. After receipt, the state engineer shall consider the application in such detail as the state engineer deems necessary and proper. The state engineer shall refuse to allow the construction of any unsafe or improper dike, dam, or other device which would interfere with the orderly control of the water resources of the district, or may order such changes, conditions, or modifications as in the judgment of the state engineer may be necessary for safety or the protection of property. Within forty-five days after receipt of the application, except in unique or complex situations, the state engineer shall complete the state engineer's initial review of the application and forward the application, along with any changes, conditions, or modifications, to the water resource board of the district within which the contemplated project is located. The board thereupon shall consider, within forty-five days, the application, and suggest any changes, conditions, or modifications to the state engineer. If the application meets with the board's approval, the board shall forward the approved application to the state engineer. The state engineer shall make the final decision on the application and forward that decision to the applicant and the local water resource board. The state engineer may issue temporary permits for dikes, dams, or other devices in cases of an emergency. Any person constructing a dam, dike, or other device, which is capable of retaining, obstructing, or diverting more than fifty acre-feet [61674.08 cubic meters] of water or twenty-five acre-feet [30837.04 cubic meters] of water for a medium-hazard or high-hazard dam, without first securing a permit to do so, as required by this section, is liable for all damages proximately caused by the dam, dike, or other device, and is guilty of a class B misdemeanor.

61-16.1-39. Dams or other devices constructed within a district shall come under control of a water resource board. All dams, dikes, and other water conservation and flood control works or devices constructed within any district, unless specifically exempted therefrom, shall, without affecting the commission's or the state engineer's authority relative to such works, automatically come under the jurisdiction of the water resource board for the district within which the dam, dike, works, or device exists or is to be constructed. No changes or modification of any existing dams, dikes, or other works or devices shall be made without complying fully with the provisions of this chapter.

61-16.1-39.1. Petition for maintenance - Bond required. A written petition for maintenance of a project other than an assessment drain may be made to the board under this section. The petition shall designate the maintenance requested. The petition must be signed by six, or if a majority is less than six, by a majority of the landowners within the area benefited by the project. The petitioners shall supply a surety bond in the amount of two hundred fifty dollars. The bond must be for the payment of costs if the board finds the petition was improvidently made.

61-16.1-39.2. Maintenance of project - Exception. If, upon receipt of a petition meeting the requirements of section 61-16.1-39.1, or upon the board's own motion, the board determines a project established under the provisions of this chapter requires maintenance, the board may provide the required maintenance by using the same method used initially to finance the project. Unless otherwise provided by law or agreement, the participation of the state in financing the initial project does not bind the state to finance any maintenance. Any maintenance

financed through special assessments may not exceed the maximum levy established by section 61-16.1-45. This section does not apply to maintenance of assessment drains.

61-16.1-40. When dams constructed by federal agency under control of district. Any dam, dike, or other water control device or flood control project constructed by or with the assistance of any federal agency but which is not maintained or operated by any federal agency shall become the responsibility of the district where it is located. The district may take any action concerning this dam, dike, or other water control device it deems feasible or necessary.

61-16.1-40.1. Maintenance of federally constructed projects - Assessment district established. If a water resource board enters or has been assigned rights in a contract with a federal agency for construction of a flood control project or soil conservation service project, and the terms of the contract require the water resource board to provide for maintenance of the project after construction, the water resource board may finance in whole or in part the maintenance of the project with funds raised through the collection of a special assessment levied against the land and premises benefited by maintenance of the project. The assessments to be levied may not exceed two dollars per acre [.40 hectare] annually on agricultural lands and may not exceed two dollars annually for each five hundred dollars of taxable valuation of nonagricultural property. No action is required for the establishment of the assessment district or the assessments except the water resource board must approve the maintenance and assessment therefor by a vote of two-thirds of the members and the board of county commissioners of the county in which the project is located must approve and levy the assessments to be made by a vote of two-thirds of its members. If a board that undertakes a project finds that the project may benefit lands in this state outside water resource district boundaries, the board shall provide notice to the water resource board where the benefited lands are located. The board of each water resource district containing lands benefited by a project must approve the project and assessment by vote of two-thirds of its members. The board of county commissioners in each county that contains lands benefited by a project must approve and levy the assessment to be made by vote of two-thirds of its members. If a project and assessment is not approved by all affected water resource boards and boards of county commissioners, the board of each water resource district and the board of county commissioners of each county shall meet to ensure that all common water management problems are jointly addressed. In addition, the water resource board that undertakes the project may proceed with the project if the board finances the cost of the project and does not assess land outside of the district. Before an assessment may be levied under this section, a public hearing must be held. The hearing must be preceded by notice as to date, time, location, and subject matter published in the official newspaper in the county or counties in which the proposed assessment is to be levied. The notice must be published at least ten days but not more than thirty days before the public hearing.

61-16.1-41. Permit to drain waters required - Penalty. Repealed by S.L. 1987, ch. 642, § 13.

61-16.1-41.1. Removal or placement of fill. Prior to removing or placing any fill adjacent to a watercourse, the person responsible shall provide written notice to the district describing the amount and type of fill to be placed or removed and the location of the activity.

For purposes of this section, "adjacent" means within two hundred feet [60.96 meters] of the bank of the body of water during normal flow or stage.

The requirements of this section do not apply to surface coal mining and reclamation operations for which a permit has been secured from the public service commission pursuant to chapter 38-14.1.

61-16.1-42. Drains along and across public roads and railroads. Drains may be laid along, within the limits of, or across any public road or highway, but not to the injury of such road. In instances where it is necessary to run a drain across a highway, the department of transportation, the board of county commissioners, or the board of township supervisors, as the case may be, when notified by the water resource board to do so, shall make necessary

openings through the road or highway at its own expense, and shall build and keep in repair all required culverts or bridges as provided under section 61-16.1-43. In instances where drains are laid along or within the rights of way of roads or highways, the drains shall be maintained and kept open by and at the expense of the water resource district concerned. A drain may be laid along any railroad when necessary, but not to the injury of the railroad, and when it is necessary to run a drain across the railroad, the railroad company, when notified by the water resource board to do so, shall make the necessary opening through such railroad, shall build the required bridges and culverts, and shall keep them in repair.

61-16.1-43. Construction of bridges and culverts - Costs. The water resource board shall construct such bridges or culverts over or in connection with a drain as in its judgment may be necessary to furnish passage from one part to another of any private farm or tract of land intersected by such drain. The cost of such construction shall be charged as part of the cost of constructing the drain, and any such bridge, culvert, or passageway shall be maintained under the authority of the water resource board, and the necessary expense shall be deemed a part of the cost of maintenance.

Whenever any bridge or culvert is to be constructed on a county or township highway system over and across or in connection with a drain, the cost of constructing such bridge or culvert shall be shared in the following manner:

1. The state water commission may, if funds are available, participate in accordance with such rules and regulations as it may prescribe. The remaining cost shall be borne forty percent by the county and sixty percent by the district which has created the need for such construction.
2. If, however, moneys have not been made available to the commission for participation in accordance with subsection 1, then forty percent of the cost of a bridge or culvert shall be paid by the county and sixty percent shall be charged as cost of the drain to the district.
3. Where such bridges or culverts are constructed with federal financial participation, the costs exceeding the amount of the federal participation shall be borne by the district and county according to the provisions of this section, as the case may be.

61-16.1-44. Culvert and pipe arch bids and acceptance. A water resource board may advertise for bids to supply culverts and pipe arches and may accept one or more low bids. A board may utilize bids for such materials received by the county within which the board has jurisdiction and may accept one or more low bids. The board may then purchase materials from the accepted low bidder or bidders for a period of one year from the date of the original acceptance of the bids.

61-16.1-45. Maintenance of drainage projects. If it is desired to provide for maintenance of an assessment drain in whole or in part by means of special assessments, the levy in any year for the maintenance may not exceed two dollars per acre [.40 hectare] on any agricultural lands benefited by the drain. The district, at its own discretion, may utilize either of the following methods for levying special assessments for the maintenance:

1. Agricultural lands that carried the highest assessment when the drain was originally established, or received the most benefits under a reassessment of benefits, may be assessed the maximum amount of two dollars per acre [.40 hectare]. The assessment of other agricultural lands in the district must be based upon the proportion that the assessment of benefits at the time of construction or at the time of any reassessment of benefits bears to the assessment of the benefits of the agricultural land assessed the full one dollar per acre [.40 hectare]. Nonagricultural property must be assessed the sum in any one year as the ratio of the benefits under the original assessments or any reassessment bears to the assessment of agricultural lands bearing the highest assessment.

2. Agricultural lands must be assessed uniformly throughout the entire assessed area. Nonagricultural property must be assessed an amount not to exceed one dollar for each five hundred dollars of taxable valuation of the nonagricultural property.

In case the maximum levy or assessment on agricultural and nonagricultural property for any year will not produce an amount sufficient to cover the cost of cleaning out and repairing the drain, a water resource board may accumulate a fund in an amount not exceeding the sum produced by the maximum permissible levy for six years.

If the cost of, or obligation for, the cleaning and repair of any drain exceeds the total amount that may be levied by the board in any six-year period, the board shall obtain the approval of the majority of the landowners as determined by chapter 61-16.1 before obligating the district for the costs.

61-16.1-46. Establishing new drains in location of invalid or abandoned drain. If any of the proceedings for the location, establishment, or construction of any drain under the provisions of this chapter shall have been enjoined, vacated, set aside, declared void, or voluntarily abandoned by the water resource board, for any reason whatsoever, the board may proceed under the provisions of sections 61-16.1-17 through 61-16.1-22 to locate, establish, and construct a new drain at substantially the same location as the abandoned or invalid drain. For the purposes of this chapter, a drain that is not properly maintained shall be considered abandoned. When a new drain is established at substantially the same location, the board shall ascertain the real value of services rendered, moneys expended and work done under the invalid or abandoned proceedings, and the extent to which the same contributes to the construction and completion of the new drain. The board shall then issue warrants in an amount not exceeding the value to the new drain of the work completed on the invalid or abandoned drain and shall deliver such new warrants, pro rata, to the owners or holders of old warrants or bonds issued under the invalid or abandoned drainage proceedings, upon the surrender of such old warrants or bonds by the holder or holders thereof.

61-16.1-47. Drain kept open and in repair by water resource board. All assessment drains that have been constructed in any district, except township drains, shall be under the charge of the water resource board and it shall be the duty of the board to keep those drains open and in good repair. It shall be the mandatory duty of the board, within the limits of available funds, to clean out and repair any assessment drain when requested to do so by petition of the affected landowners having fifty percent or more of the possible votes, as determined according to section 61-16.1-20.

61-16.1-48. Assessment of costs of cleaning and repairing drains. The cost of cleaning out and repairing an assessment drain or a drainage structure constructed by any governmental entity for which no continuing funds for maintenance are available must be assessed pro rata against the lands benefited in the same proportion as the original assessment of the costs in establishing such drain, or in accordance with any reassessment of benefits in instances where there has been a reassessment of benefits under the provisions of section 61-16.1-26. In cases where no assessment for construction costs or reassessment of benefits has been made, the water resource board shall make assessments for the cost of cleaning and repairing such drain or drainage structure constructed by any governmental entity for which no continuing funds for maintenance are available in accordance with the provisions of this chapter for the establishment of a new project. The governing body of any incorporated city, by agreement with the board, is authorized to contribute to the cost of cleaning out, repairing, and maintaining a drain in excess of the amount assessed under this section, and such excess contribution may be expended for such purposes by the board.

61-16.1-49. Petition for a lateral drain - Bond of petitioners.

1. For the purposes of this section, "lateral drain" means a drain constructed after the establishment of an original assessment drain or drainage system and which flows into such original drain or drainage system from outside the limits of the assessed area of the original drain; provided, that a determination by a water resource board

as to whether an existing or proposed drain is a lateral or a new drain shall be conclusive when entered upon the records of the board.

2. All property owners whose property would be affected by a lateral drain may jointly petition the board for the construction of such drain and shall deposit with the board a good and sufficient bond to be approved by the board, conditioned upon the petitioner or petitioners paying all costs of the proposed lateral drain. A petition for a lateral drain shall be sufficient if signed by one or more property owners whose property will be affected by the lateral drain. Whenever improvements of an original drain are made necessary by the construction of a lateral drain, the costs of such improvements to the original drain shall be charged as part of the cost of construction of the lateral drain and assessed against the property benefited thereby and collected as other assessments are collected. In the event the board determines that improvements to the original drain are also beneficial to property served by the original drain, the board may assess that portion of the cost of the improvements it determines appropriate to property benefited by the original drain. Unless the petitioners agree to construct the lateral drain, the board, within ten days, may commence proceedings for the construction of the lateral drain according to the provisions of this chapter. No person shall dig or construct any lateral ditch or drain which will conduct the flow of water from any land or lands into any drain constructed under the provisions of this chapter, except as provided in this section and with approval of the board. In all instances involving the construction of a lateral drain, the board shall estimate and determine the proportionate share of the cost of the main or original drain which should be paid by the petitioners. The petitioners shall pay into the district treasury the amount so determined, and shall then be allowed to connect such lateral ditches or drains with the original drain under the direction and superintendence of the board, but at their own cost and expense. The money paid into the county treasury shall be credited to the drainage fund of the specific drain involved.
3. Where one or more of the property owners to be benefited by the construction of a lateral drain or ditch petitions the district for the construction of a lateral drain or ditch, the district shall then proceed in the same manner as is used for the establishment of a new drain and thereafter such lateral drain shall constitute a part of the original drain to which it is connected and the affected property shall be a part of such drainage district.

61-16.1-50. Drains having a common outlet may be consolidated. Whenever one or more drains which have from time to time been constructed, empty into a drain that supplies the outlet for waters flowing in all such drains, such drains may by resolution or order of the water resource board, if the cost of construction of such drains has been paid, be consolidated into one drain or drainage system and shall be renumbered and may be renamed.

61-16.1-51. Removal of obstructions to drain - Notice and hearing - Appeal - Injunction - Definition. If a water resource board determines that an obstruction to a drain has been caused by the negligent act or omission of a landowner or tenant, the board shall notify the landowner by registered mail at the landowner's post-office address of record. A copy of the notice must also be sent to the tenant, if any. The notice must specify the nature and extent of the obstruction, the opinion of the board as to its cause, and must state that if the obstruction is not removed within such period as the board determines, but not less than fifteen days, the board shall procure removal of the obstruction and assess the cost of the removal, or the portion the board determines appropriate, against the property of the landowner responsible. The notice must also state that the affected landowner, within fifteen days of the date the notice is mailed, may demand, in writing, a hearing on the matter. Upon receipt of the demand the board shall set a hearing date within fifteen days from the date the demand is received. In the event of an emergency the board may immediately apply to the appropriate district court for an injunction prohibiting a landowner or tenant from maintaining an obstruction. Assessments levied under the provisions of this section must be collected in the same manner as other assessments authorized by this chapter. If, in the opinion of the board, more than one landowner or tenant has

been responsible, the costs may be assessed on a pro rata basis in accordance with the proportionate responsibility of the landowners. A landowner aggrieved by action of the board under this section may appeal the decision of the board to the district court of the county in which the land is located in accordance with the procedure provided in section 28-34-01. A hearing as provided for in this section is not a prerequisite to an appeal. If the obstruction is located in a road ditch, the timing and method of removal must be approved by the appropriate road authority before the notice required by this section is given and appropriate construction site protection standards must be followed.

For the purposes of this section, "an obstruction to a drain" means a barrier to a watercourse, as defined by section 61-01-06, or an artificial drain, including if the watercourse or drain is located within a road ditch, which materially affects the free flow of waters in the watercourse or drain.

61-16.1-52. Closing a noncomplying drain - Notice and hearing - Appeal - Injunction. Repealed by S.L. 1987, ch. 642, § 13.

61-16.1-53. Removal of a noncomplying dike or dam - Notice and hearing - Appeal - Injunction. Upon receipt of a complaint of unauthorized construction of a dike, dam, or other device for water conservation, flood control, regulation, watershed improvement, or storage of water, the water resource board shall promptly investigate and make a determination thereon. If the board determines that a dam or other device, capable of retaining, obstructing, or diverting more than fifty acre-feet [61674.08 cubic meters] of water or twenty-five acre-feet [30837.04 cubic meters] of water for a medium-hazard or high-hazard dam, has been established or constructed by a landowner or tenant contrary to this title or any rules adopted by the board, the board shall notify the landowner by registered mail at the landowner's post-office address of record. A copy of the notice must also be sent to the tenant, if any. The notice must specify the nature and extent of the noncompliance and must state that if the dike, dam, or other device is not removed within the period the board determines, but not less than fifteen days, the board shall cause the removal of the dike, dam, or other device and assess the cost of the removal, or the portion the board determines, against the property of the landowner responsible. The notice must also state that the affected landowner, within fifteen days of the date the notice is mailed, may demand, in writing, a hearing upon the matter. Upon receipt of the demand, the board shall set a hearing date within fifteen days from the date the demand is received. In the event of an emergency, the board may immediately apply to the appropriate district court for an injunction prohibiting the landowner or tenant from constructing or maintaining the dike, dam, or other device, or ordering the landowner to remove the dike, dam, or other device. Assessments levied under this section must be collected in the same manner as other assessments authorized by this chapter. If, in the opinion of the board, more than one landowner or tenant has been responsible, the costs may be assessed on a pro rata basis in proportion to the responsibility of the landowners. A person aggrieved by action of the board under this section may appeal the decision of the board to the district court of the county in which the land is located in accordance with the procedure provided in section 28-34-01. A hearing as provided for in this section is not prerequisite to an appeal.

61-16.1-53.1. Appeal of board decisions - State engineer review - Closing of noncomplying dams, dikes, or other devices for water conservation, flood control, regulation, and watershed improvement. The board shall make the decision required by section 61-16.1-53 within a reasonable time, not exceeding one hundred twenty days, after receiving the complaint. The board shall notify all parties of its decision by registered mail. The board's decision may be appealed to the state engineer by any aggrieved party. The appeal to the state engineer must be made within thirty days from the date notice of the board's decision has been received. The appeal must be made by submitting a written notice to the state engineer which must specifically set forth the reason why the appealing party believes the board's decision is erroneous. The appealing party shall also submit copies of the written appeal notice to the board and to all nonappealing parties. Upon receipt of this notice the board, if it has ordered removal of a dam, dike, or other device, is relieved of its obligation to procure the removal of the dam, dike, or other device. The state engineer shall handle the appeal by conducting an independent investigation and making an independent determination of the matter.

The state engineer may enter property affected by the complaint for the purpose of investigating the complaint.

If the board fails to investigate and make a determination concerning the complaint within a reasonable time, not exceeding one hundred twenty days, the person filing the complaint may file the complaint with the state engineer. The state engineer, without reference to chapter 28-32, shall cause the investigation and determination to be made, either by action against the board, or by personally conducting the investigation and personally making the determination. If the state engineer determines that a dam, dike, or other device has been constructed or established by a landowner or tenant contrary to title 61 or any rules adopted by the board, the state engineer shall take one of these three actions:

1. Notify the landowner by registered mail at the landowner's post-office address of record;
2. Return the matter to the jurisdiction of the board along with the investigation report; or
3. Forward the dam, dike, or other device complaint and investigation report to the state's attorney.

If the state engineer decides to notify the landowner, the notice must specify the nature and extent of the noncompliance and must state that if the dam, dike, or other device is not removed within such reasonable time as the state engineer determines, but not less than thirty days, the state engineer shall procure the removal of the dam, dike, or other device and assess the cost of removal against the property of the responsible landowner. The notice from the state engineer must state that, within fifteen days of the date the notice is mailed, the affected landowner may demand, in writing, a hearing on the matter. Upon receipt of the demand, the state engineer shall set a hearing date within fifteen days from the date the demand is received. If, in the opinion of the state engineer, more than one landowner or tenant has been responsible, the costs may be assessed on a pro rata basis in proportion to the responsibility of the landowners. Upon assessment of costs, the state engineer shall certify the assessment to the county auditor of the county where the noncomplying dam, dike, or other device is located. The county auditor shall extend the assessment against the property assessed. Each assessment must be collected and paid as other property taxes are collected and paid. Assessments collected must be deposited with the state treasurer and are hereby appropriated out of the state treasury and must be credited to the contract fund established by section 61-02-64.1. Any person aggrieved by action of the state engineer under this section may appeal the decision of the state engineer to the district court in accordance with chapter 28-32. A hearing by the state engineer as provided for in this section is a prerequisite to such an appeal.

If the state engineer, after completing the investigation required under this section, decides to return the matter to the board, a complete copy of the investigation report must be forwarded to the board and it must include the nature and extent of the noncompliance. Upon having the matter returned to its jurisdiction, the board shall carry out the state engineer's decision in accordance with the terms of this section.

If the state engineer, after completing the investigation required under this section, decides to forward the dam, dike, or other device complaint to the state's attorney, a complete copy of the investigation report must also be forwarded, which must include the nature and extent of the noncompliance. The state's attorney shall prosecute the complaint in accordance with the statutory responsibilities prescribed in chapter 11-16.

In addition to the penalty imposed by the court in the event of conviction under this statute, the court shall order the dam, dike, or other device removed within such reasonable time period as the court determines, but not less than thirty days. If the dam, dike, or other device is not removed within the time prescribed by the court, the court shall procure the removal of the dam, dike, or other device, and assess the cost thereof against the property of the landowner responsible, in the same manner as other assessments under chapter 61-16.1 are levied. If, in

the opinion of the court, more than one landowner or tenant has been responsible, the costs may be assessed on a pro rata basis in proportion to the responsibility of the landowners.

The authority granted in this section may only be exercised for dams, dikes, or other devices constructed after August 1, 1999.

61-16.1-54. Appeal from decision of water resource board - Undertaking - Jurisdiction. An appeal may be taken to the district court from any order or decision of the water resource board by any person aggrieved. An appellant shall file an undertaking in the sum of two hundred dollars with such sureties as may be approved by the clerk of the district court to which the appeal is taken. The undertaking must be conditioned that the appellant will prosecute the appeal without delay and will pay all costs adjudged against the appellant in the district court. The undertaking must be in favor of the water resource board as obligee, and may be sued on in the name of the obligee. The appeal must be taken to the district court of the county in which the land claimed to be affected adversely by the order or decision appealed from is located and is governed by the procedure provided in section 28-34-01.

61-16.1-55. Appeal from decision of water resource board - How to be taken. Repealed by S.L. 1989, ch. 83, § 36.

61-16.1-56. Time for taking appeal from water resource board decision. Repealed by S.L. 1989, ch. 83, § 36.

61-16.1-57. Filing appeal - Docketing and hearing appeals - Final judgment and sending back. Repealed by S.L. 1989, ch. 83, § 36.

61-16.1-58. Attorney general to assist boards - Employment of counsel. The attorney general shall render legal opinions or such other assistance to water resource boards as is required to be rendered to state officers by section 54-12-01. The water resource board, however, may employ other counsel to advise and represent it in such actions and appeals and in its proceedings.

61-16.1-59. Proceedings to confirm judicially contracts, special assessments, and other acts. Any water resource board, before making any contract, or before levying special assessments, or issuing special assessment warrants, or before taking any special action, may commence a special proceeding in district court by which the proceeding leading up to the making of such contract, levying special assessments, issuing special assessment warrants, or leading up to any other special action, shall be judicially examined, approved, and confirmed. Such judicial proceedings shall comply substantially with the procedure required in the case of judicial confirmation of proceedings, acts, and contracts of an irrigation district.

61-16.1-60. Authorization to organize association of water resource districts.

1. Water resource districts, organized and established pursuant to this chapter, are hereby authorized upon resolution of the water resource boards to organize and participate in an association of districts.
2. The association or associations authorized hereunder shall be organized pursuant to chapter 10-33.

61-16.1-61. Water resource districts - Assumption of assets and liabilities of drain boards. Beginning on July 1, 1981, each water resource district shall assume all assets, liabilities, and obligations of any county drain board whose territory is included within the boundaries of the district. When the jurisdiction of any county drain board is included within two or more districts, the county auditor shall determine the apportionment of any assets, liabilities, and obligations. Such apportionment shall be based on the proportionate amount of taxable valuation included in each district, except that special assessment projects and funds, property interests, and physical assets attached to the land shall be assumed by the district in which the project is located. Property interests and physical assets attached to the land shall be assumed

by the district in which they are located. Prior to February 1, 1983, and for review by each affected water resource board, each water resource district and county drain board shall have a certified public accountant prepare a final audit of its financial records, including all special assessment funds and obligations, assets, and other liabilities. All necessary actions to accomplish the transfer of assets and obligations under this section shall be complete prior to January 1, 1982.

61-16.1-62. Validating organization and acts of water resource districts and county drain boards. Nothing contained in this chapter shall be construed as impairing, invalidating, or in any manner affecting the validity of acts or proceedings of water resource districts or county drain boards which existed prior to the passage and approval of this chapter.

61-16.1-63. Penalty for violation of chapter. Any person violating any of the provisions of this chapter shall, if no other criminal penalty is specifically provided, be guilty of a class B misdemeanor.

**CHAPTER 61-16.2
FLOODPLAIN MANAGEMENT**

<u>Section</u>		<u>Page</u>
61-16.2-01	Legislative intent and purpose.....	61-16.2: 1
61-16.2-02	Definitions	61-16.2: 1
61-16.2-03	Duties of state engineer	61-16.2: 2
61-16.2-04	Delineation of floodplains and floodways	61-16.2: 2
61-16.2-05	Floodplain management ordinances	61-16.2: 2
61-16.2-06	Permissible floodway uses	61-16.2: 2
61-16.2-07	[Repealed].....	61-16.2: 3
61-16.2-08	Community standards - Permissible uses within flood fringe	61-16.2: 3
61-16.2-09	Enforcement and penalties	61-16.2: 3
61-16.2-10	Exceptions	61-16.2: 3
61-16.2-11	Authority to enter and investigate lands or waters.....	61-16.2: 4
61-16.2-12	State property.....	61-16.2: 4
61-16.2-13	Flood insurance	61-16.2: 4
61-16.2-14	State engineer review of development in regulatory floodways - Exceptions	61-16.2: 4

CHAPTER 61-16.2 FLOODPLAIN MANAGEMENT

61-16.2-01. Legislative intent and purpose. The legislative assembly finds and declares that a large portion of the state's land resources is subject to recurrent flooding by overflow of streams and other watercourses causing loss of life and property, disruption of commerce and governmental services, unsanitary conditions, and interruption of transportation and communications, all of which are detrimental to the health, safety, welfare, and property of the occupants of flooded lands and the people of this state. The legislative assembly further finds that public interest necessitates that the floodplains of this state be developed in a manner which will alleviate loss of life and threat to health, and reduce private and public economic loss caused by flooding.

It is therefore the policy of this state and the purpose of this chapter to guide development of the floodplains of this state in accordance with the enumerated legislative findings, to reduce flood damages through sound floodplain management, stressing nonstructural measures such as floodplain zoning and floodproofing, acquisition and relocation, and flood warning practices; and to ensure as far as practicable that the channels and those portions of the floodplains of watercourses which are the floodways are not inhabited and are kept free and clear of interference or obstructions which may cause any undue restriction of the capacity of the floodways.

It is also the policy of this state and purpose of this chapter to provide state coordination and assistance to communities in floodplain management activities, to encourage communities to adopt, administer, and enforce sound floodplain management ordinances, and to provide the state engineer with authority necessary to carry out and enforce a floodplain management program for the state and to coordinate federal, state, and local floodplain management activities in this state.

61-16.2-02. Definitions. In this chapter, unless the context or subject matter otherwise provides:

1. "Commission" means state water commission.
2. "Community" means any political subdivision that has the authority to zone.
3. "Conveyance" or "hydraulic conveyance" means a geometric characteristic of a river or watercourse at a given point that determines the flow-carrying capacity at that point.
4. "District" means a water resource district, as defined in chapter 61-16.1.
5. "Flood fringe" means that portion of a floodplain outside of the floodway.
6. "Floodway" or "regulatory floodway" means the channel of a river or other watercourse and the adjacent land areas that must be reserved in order to discharge the base flood without cumulatively increasing the water surface elevation more than one foot [.30 meter].
7. "Person" means any person, firm, partnership, association, corporation, limited liability company, agency, or any other private or governmental organization, which includes, but is not limited to, any agency of the United States, a state agency, or any political subdivision of the state.
8. "State engineer" means the state engineer appointed pursuant to section 61-03-01, who is also the chief executive officer of the commission, or, for the purpose of this chapter, the state engineer's designee.

For the purposes of this chapter, the state engineer shall, in addition to the definitions listed above, follow the definitions under the national flood insurance program [42 U.S.C. 4001 et seq.] and implementing regulations, which are hereby incorporated into and made a part of this chapter by reference.

61-16.2-03. Duties of state engineer. The state engineer shall:

1. Collect and distribute information relating to flooding and floodplain management.
2. Coordinate local, state, and federal floodplain management activities to the greatest extent possible, and encourage appropriate federal agencies to make their flood control planning data available to communities and districts for planning purposes, in order to allow adequate local participation in the planning process and in the selection of desirable alternatives.
3. Assist communities and districts in their floodplain management activities within the limits of available appropriations and personnel in cooperation with the division of homeland security.
4. Do all other things, within lawful authority, which are necessary or desirable to manage the floodplains for uses compatible with the preservation of the capacity of the floodplain to carry and discharge the base flood. In cooperation with communities and districts, the state engineer shall conduct, whenever possible, periodic inspections to determine the effectiveness of local floodplain management programs, including an evaluation of the enforcement of and compliance with local floodplain management ordinances.

61-16.2-04. Delineation of floodplains and floodways. The state engineer shall assist communities in preparing and obtaining data and other necessary information for the delineation of floodplains and floodways. When the state engineer determines that sufficient technical information is available for the delineation of floodplains and floodways on a watercourse or lake, the state engineer shall then consult with the appropriate district and each affected community. The state engineer, the affected community, and the appropriate district shall consider flooding experiences, plans to avoid potential hazards, estimates of economic impacts of flooding on the community, both historical and prospective, and such other data as the district and community may consider appropriate. Upon obtaining and developing the necessary information for delineation of the floodplain and floodway, the state engineer and the affected community shall notify the appropriate federal agency and request that such material be used to delineate the floodplain and floodway under the national flood insurance program [42 U.S.C. 4001 et seq.]. The regulatory floodway must be able to carry the waters of the base flood without cumulatively increasing the water surface elevation of the base flood more than one foot [30.48 centimeters] at any point.

61-16.2-05. Floodplain management ordinances.

1. Each community shall submit the floodplain management ordinances adopted under the national flood insurance program [42 U.S.C. 4001 et seq.] to the state engineer for review.
2. If the state engineer determines that there is a failure by a community to comply with the intent, purposes, and provisions of this chapter and the minimum ordinances adopted under the national flood insurance program [42 U.S.C. 4001 et seq.], the state engineer shall notify the appropriate federal agency and the community of those findings. The state engineer shall also notify the community of the state and federal penalties for such noncompliance and shall work with the community until such time as the state engineer determines that the community will or is complying.

61-16.2-06. Permissible floodway uses. Upon delineation of the floodway under the national flood insurance program [42 U.S.C. 4001 et seq.], uses shall be permitted within the

floodway to the extent that they do not cause any measurable decrease in the hydraulic conveyance in the affected area.

61-16.2-07. Prohibited uses within floodway. Repealed by S.L. 1983, ch. 682, § 1.

61-16.2-08. Community standards - Permissible uses within flood fringe. Upon delineation of the floodplain or floodway under the national flood insurance program [42 U.S.C. 4001 et seq.], the following uses shall be permitted within the flood fringe to the extent that they are not prohibited by any other ordinance, regulation, or statute:

1. Any use permitted in the regulatory floodway pursuant to section 61-16.2-06.
2. Structures, including residential and nonresidential structures; provided, that:
 - a. Residential structures are constructed on fill such that the lowest floor, including basements, is elevated to at least one foot [30.48 centimeters] above the base flood elevation unless granted a residential basement floodproof exception under the national flood insurance program.
 - b. Nonresidential structures are either constructed on fill as specified in subdivision a elevated to at least one foot [.30 meter] above the base flood elevation or are adequately floodproofed up to an elevation no lower than two feet [.61 meter] above the base flood elevation. Such floodproofing shall be in accordance with the standards either adopted by the community under the national flood insurance program [42 U.S.C. 4001 et seq.] or under this chapter, whichever are more restrictive.

61-16.2-09. Enforcement and penalties.

1. It is unlawful for any person to establish any use which is not in accordance with this chapter within any floodplain without prior written approval of the affected community. Every use placed in the floodplain in violation of this chapter or a floodplain management ordinance adopted under or in compliance with the provisions of this chapter, or adopted under the national flood insurance program [42 U.S.C. 4001 et seq.], is a public nuisance and the construction or installation thereof may be enjoined by an action brought by the state engineer or the appropriate community. The state engineer or community may obtain a court order directing the removal or elimination of such public nuisance, or authorizing the state engineer or community to remove the public nuisance, or cause to be removed, at the expense of the owner. A person who violates any of the provisions of this chapter is guilty of a class B misdemeanor.
2. Any community which fails to adopt or enforce floodplain management ordinances as required under the national flood insurance program [42 U.S.C. 4001 et seq.] by this chapter shall not be eligible to receive any flood disaster assistance, financial or otherwise, from this state pursuant to chapter 37-17.1 or any other state funds available under any other authority for flood relief.

61-16.2-10. Exceptions. This chapter shall not apply to the following actions or construction, as long as the flood carrying capacity within the altered or relocated portion of any watercourse is maintained, and the cumulative effect of any such action or construction will not increase the water surface elevation of the base flood more than one foot [30.48 centimeters] at any point:

1. Ring dikes around individual farmsteads which are not constructed with tiebacks to existing roadways or dikes. For the purposes of this section, "ring dike" means an embankment constructed of earth or other suitable materials for purposes of enclosing a farmstead consisting of a farm dwelling and associated farm buildings.

2. Agricultural dikes along the Red River of the North and Bois de Sioux River which are constructed pursuant to and in accordance with any joint and cooperative agreements between North Dakota and Minnesota for the establishment of criteria for authorizing dikes and other flood control structures and measures on the Red River of the North and Bois de Sioux River.

Any exception to the national flood insurance program [42 U.S.C. 4001 et seq.] and implementing regulations granted by the appropriate federal agency to a community which is participating in the national flood insurance program [42 U.S.C. 4001 et seq.] shall be an approved exception pursuant to this section.

61-16.2-11. Authority to enter and investigate lands or waters. The state engineer or any community must notify all landowners prior to making any entry upon any lands and waters in the state for the purpose of making an investigation, survey, removal, or repair contemplated by this chapter. An investigation of a nonconforming use or existing construction or structure shall be made by the state engineer either on the state engineer's own initiative, on the written request of an owner of land abutting the watercourse involved, or on the written request of a community.

61-16.2-12. State property. Notwithstanding any other statutes or regulations, all state property and structures thereon shall be subject to the provisions of this chapter and any ordinances adopted pursuant to this chapter or the national flood insurance program [42 U.S.C. 4001 et seq.].

61-16.2-13. Flood insurance. Communities that have residential and nonresidential structures in areas subject to excessive flooding, as determined by the state engineer, shall participate in the national flood insurance program [Pub. L. 90-448] and Acts amendatory thereof or supplementary thereto, so that the people of North Dakota may have the opportunity to indemnify themselves from future flood losses through the purchase of this insurance. A community is not required to participate in the program if all of the land under the jurisdiction of the community is enrolled as a result of another community's participation in the program.

61-16.2-14. State engineer review of development in regulatory floodways - Exceptions. Before issuing a permit or authorization to allow a use in a regulatory floodway, the community responsible for permitting or authorizing such use shall notify the state engineer of the proposed use. The state engineer shall determine whether a functioning hydraulic model is needed to measure the effect of the proposed use. Upon the request of the state engineer, the community shall submit to the state engineer for review all technical documentation, including a functioning hydraulic model and other technical information needed for the state engineer's review to analyze the proposed use and to identify its proposed impact. The state engineer shall complete the state engineer's review within thirty days after receiving the technical documentation. Upon completion of the state engineer's review, the state engineer shall notify the community whether the proposed use is in compliance with state and federal law. A community may apply to the state engineer for an exemption on a case-by-case basis from this section. The state engineer may grant the exemption if the state engineer determines that the community, by using its own technical review, can determine if the proposed use is in compliance with state and federal law.

**CHAPTER 61-20
ARTESIAN WELLS**

<u>Section</u>		<u>Page</u>
61-20-01	Valve or valves required on artesian well - Flow permitted from artesian wells - Preventing flow	61-20: 1
61-20-02	Drilling artesian or flowing well - Requirements	61-20: 1
61-20-03	Wild wells	61-20: 1
61-20-04	Artesian or flowing wells - Penalty for certain actions	61-20: 1
61-20-05	[Repealed]	61-20: 1
61-20-06	Duties of state engineer	61-20: 1
61-20-07	Enforcement of chapter by state engineer - Appeal	61-20: 2
61-20-08	[Repealed]	61-20: 2

CHAPTER 61-20 ARTESIAN WELLS

61-20-01. Valve or valves required on artesian well - Flow permitted from artesian wells - Preventing flow. Every person, stock company, association, corporation, or limited liability company owning or controlling the real estate upon which is located an artesian or flowing well shall provide for each such well a valve or valves capable of controlling the discharge from such well and shall keep such valve or valves so adjusted that only such supply of water shall escape as is necessary for ordinary use by the owner, or the person in control, of such land, in conducting the owner's or person's business. In the winter, such flow may be permitted as will prevent freezing of the well, and in those cases where it is necessary, a sufficient flow may be allowed for the purposes of developing the well. The owner of an artesian well shall be required, by means of the construction of a reservoir or otherwise, to prevent the flow of the owner's well from running upon land belonging to another or from running into any ditch along any public highway except a regularly established drainage ditch.

61-20-02. Drilling artesian or flowing well - Requirements. Every person, stock company, association, corporation, or limited liability company which shall drill an artesian or flowing well, shall comply with the rules of the state engineer regarding such activity.

61-20-03. Wild wells. The provisions of this chapter shall apply to a "wild" well, or a well out of control, except that if it is determined by the state engineer that such well cannot be repaired for use, no valve shall be attached, but every effort shall be made by the owner to seal, plug, or cut off the same. Old wells which might be damaged by so doing need not be shut off, but such wells shall be put in repair at the earliest possible date and shall be regulated thereafter.

61-20-04. Artesian or flowing wells - Penalty for certain actions. The owner or person in control of an artesian or flowing well, who:

1. Allows it to flow without a valve or other device for checking the flow as required by law, or without proper repair of pipes and valves;
2. Interferes with the well, valve, or other device;
3. Permits the water to waste unnecessarily; or
4. Permits the water to run upon the lands of another or into the ditches along any public road except a regularly established drainage ditch,

shall be guilty of a class B misdemeanor. The provisions of this section shall also apply to the officer or members of a board in charge of wells belonging to the state, or any county, township, or municipality.

61-20-05. Township and county assessors shall list all artesian and flowing wells annually - Forwarding data to state water commission. Repealed by S L. 1983, ch. 598, § 25.

61-20-06. Duties of state engineer. The state engineer shall advise the citizens of the state as to the practicability of measures affecting the underground waters of this state. The state engineer shall:

1. Counsel and consult with the owner and assist the owner to work out the most desirable control and use of the owner's well.
2. Select at least three representative flowing wells in each county having that number, and as many more as it may deem advisable.

3. Cause the record of their flows and pressures to be taken, from time to time, to learn as much as possible of the decline, fluctuations, and permanence of the artesian supply.
4. Plan and conduct such other investigations as it may find advisable to ascertain the best method of prolonging the utility of the same.
5. Keep a record of the location, size, depth, flow, size of flow, character of water, construction, and history of all artesian wells of the state, and keep it on file for public reference.
6. Secure the enforcement of all laws pertaining to artesian and phreatic waters of the state.
7. Publish from time to time, as it may deem advantageous, bulletins containing information concerning the artesian wells and phreatic waters of the state.

The state engineer may make such additional reasonable rules and regulations governing such wells as it shall determine.

61-20-07. Enforcement of chapter by state engineer - Appeal. The provisions of this chapter must be enforced by the state engineer. The state engineer may issue administrative orders requiring compliance with this chapter. An appeal from the engineer's ruling may be taken under the provisions of chapter 28-32.

61-20-08. Deputy - Appointment by state geologist - Removal - Salary. Repealed by S.L. 1965, ch. 447, § 24.

CHAPTER 61-21 DRAINAGE PROJECTS

<u>Section</u>	<u>Page</u>
61-21-01 Definitions.....	61-21: 1
61-21-02 Watercourses, ditches, and drains may be constructed, maintained, repaired, improved, or extended	61-21: 1
61-21-02.1 Assessment drain culverts	61-21: 1
61-21-03 [Repealed]	61-21: 2
61-21-04 [Repealed]	61-21: 2
61-21-05 [Repealed]	61-21: 2
61-21-06 [Repealed]	61-21: 2
61-21-07 [Repealed]	61-21: 2
61-21-08 [Repealed]	61-21: 2
61-21-09 [Repealed]	61-21: 2
61-21-10 Petition for construction of drain - Purposes of drain - Signers to petition	61-21: 2
61-21-11 Bond required from petitioners	61-21: 2
61-21-12 Examination of line for drain - Designation of surveyor - Specifications - Cost estimates	61-21: 2
61-21-13 Hearing on petition to establish drain and surveyor's report - Notice - Contents	61-21: 3
61-21-14 Conduct of hearing on petition to establish drain	61-21: 3
61-21-15 Denying or making order establishing drain - Costs when petition denied	61-21: 3
61-21-16 Voting right or power of landowners	61-21: 4
61-21-17 Notice of order establishing drain and period for appeal	61-21: 4
61-21-18 Appeal to district court - Time - Undertaking - Hearing	61-21: 4
61-21-19 Right of way - How acquired - Assessment of damages - Issuance of warrants	61-21: 4
61-21-20 Assessing cost of constructing and maintaining drain	61-21: 5
61-21-21 Assessment subject to review - Notice of time and place	61-21: 5
61-21-22 Hearing on assessment - Appeal to state engineer - Correction of assessments - Relocating drain - Fees of state engineer	61-21: 5
61-21-23 Recording assessment	61-21: 6
61-21-24 Notice of letting of contracts	61-21: 6
61-21-25 Letting of contracts for drains	61-21: 6
61-21-26 Extension of time to contractors - Reletting unfinished part of contract	61-21: 6
61-21-27 Apportionment and taxation of costs	61-21: 6
61-21-28 Collection of drain taxes	61-21: 6
61-21-29 Payment of costs and expenses of locating, constructing, maintaining, and improving drain - Warrants issued	61-21: 6
61-21-30 Additional assessment to meet deficit or additional expense	61-21: 7
61-21-31 Drains along and across public roads and railroads	61-21: 7

61-21-32	Construction of bridges and culverts - Cost	61-21:	7
61-21-32.1	Culvert and pipe arch bids and acceptance	61-21:	8
61-21-33	Boards of two or more counties may construct drains through counties	61-21:	8
61-21-34	Procedure to construct or extend a drain through or into two or more counties	61-21:	8
61-21-35	Settlement of unpaid warrants	61-21:	8
61-21-36	Cooperating with drainage boards or officials of other states in drainage matters	61-21:	8
61-21-37	Drainage boards or commissioners of different states may meet in joint conference to effectuate cooperation	61-21:	8
61-21-38	Proceedings in drainage matters other than establishment and construction of drains - Establishment of lateral drains	61-21:	9
61-21-39	Petition for a lateral drain - Bond of petitioners - Penalty	61-21:	9
61-21-40	Collection of tax or assessment levied not to be enjoined or declared void - Exceptions	61-21:	9
61-21-41	Establishing new drains in location of invalid or abandoned drain	61-21:	10
61-21-42	Drain kept open and in repair by board	61-21:	10
61-21-43	Assessment of costs of cleaning and repairing drains	61-21:	10
61-21-43.1	Removal of obstructions to drain - Notice and hearing - Appeal - Injunction	61-21:	11
61-21-44	Reassessment of benefits	61-21:	11
61-21-45	Contracts for work of cleaning and repairing drains	61-21:	11
61-21-46	Maximum levy - Accumulation of fund	61-21:	11
61-21-47	Expenditures in excess of maximum levy	61-21:	12
61-21-48	Reconveyance of land no longer required for drainage purposes ..	61-21:	12
61-21-49	County may pay share of drainage taxes on tax deed lands	61-21:	12
61-21-50	Drain warrants - Terms and amounts	61-21:	12
61-21-51	Payment of drain assessments - Interest	61-21:	13
61-21-52	Lien for and enforcement of drain assessments	61-21:	13
61-21-53	Drain bonds	61-21:	13
61-21-54	Sinking funds and bonds	61-21:	14
61-21-55	Liability for deficiencies - Maintenance of sinking fund	61-21:	15
61-21-56	Dissolution of drainage district - Return of unexpended assessments	61-21:	15
61-21-57	Penalty for violation of rules and regulations	61-21:	15
61-21-58	Existing obligations and regulations	61-21:	15
61-21-59	[Repealed] [Superseded by 61-26-01]	61-21:	15
61-21-60	[Repealed] [Superseded by 61-26-02]	61-21:	15
61-21-61	[Repealed] [Superseded by 61-26-03]	61-21:	15
61-21-62	Board may apportion assessments for benefits of an established drain against a county or city or any tract of land benefited by an established drain	61-21:	15

61-21-63	Drains having a common outlet may be consolidated	61-21: 16
61-21-64	Outlets	61-21: 16
61-21-65	Consolidation of drainage district or districts into water resource districts	61-21: 16
61-21-66	Dissolution prohibited when liabilities outstanding - Disposition of assets	61-21: 16
61-21-67	Closing of noncomplying drain - Notice and hearing - Appeal - Injunction	61-21: 17

CHAPTER 61-21 DRAINAGE PROJECTS

61-21-01. Definitions. In this chapter, unless the subject matter otherwise requires:

1. "Affected landowners" means landowners whose land is subject to assessment or condemnation.
2. "Board" means the *board of managers of a water resource district*.
3. "Cleaning out and repairing of drain" means deepening and widening of drains as well as removing obstructions or sediment, and any repair necessary to return the drain to a satisfactory and useful condition.
4. "Drain" means any natural watercourse opened, or proposed to be opened, and improved for the purpose of drainage and any artificial drains of any nature or description constructed for such purpose, including dikes and appurtenant works. This definition may include more than one watercourse or artificial channel constructed for the aforementioned purpose when the watercourses or channels drain land within a practical drainage area as determined by the written petition called for in section 61-21-10 and the survey and examination called for in section 61-21-12.
5. "Lateral drain" means a drain constructed after the establishment of the original drain or drainage system and which flows into such original drain or drainage system from outside the limits of the original drain; provided, that a determination by the board as to whether an existing or proposed drain is a lateral or a new drain within the meaning of this subsection shall be conclusive when entered upon the records of such board.

61-21-02. Watercourses, ditches, and drains may be constructed, maintained, repaired, improved, or extended. Watercourses, ditches, drains, and improvements thereto for the drainage of sloughs and other lowlands may be surveyed and investigated and established, constructed, maintained, repaired, improved, and cleaned out in the several counties of this state under the provisions of this chapter wherever the same shall be conducive to the public health, convenience, or welfare. The powers conferred by this chapter and this section shall extend to and include but shall not be limited to:

1. The deepening and widening or any necessary improvement of drains which have been or hereafter may be constructed.
2. The straightening, clearing, or cleaning out and deepening of channels of creeks, streams, and rivers, and the construction, maintenance, remodeling, repairing, and extension of levees, dikes, and barriers for the purpose of drainage.
3. The location or extension of any drain if such location or extension is necessary to provide a suitable outlet or reasonably drain lands within a practical drainage area of such drains.
4. The establishment, in whole or in part, of a drain and the completion of the same on the line of an abandoned or invalid drain.
5. The establishment and construction of lateral drains with outlets in drains already constructed.

61-21-02.1. Assessment drain culverts. As part of the design and construction of a proposed assessment drain or the maintenance or reconstruction of an existing assessment drain, the board, upon approval of the appropriate road authority, may locate, relocate, size, and

install culverts through roads which are not on the routes of assessment drains but which are within the assessment area and which are necessary for surface water to reach the assessment drain. The design and installation of culverts under this section must be consistent with chapters 24-03 and 24-06 and the streamcrossing and construction site protection standards prepared by the department of transportation and the state engineer.

61-21-03. Board of drainage commissioners - Appointment - Term - Removal - Compensation. Repealed by S.L. 1981, ch. 632, § 12.

61-21-04. State and county officers not eligible as drain commissioners - Matters of personal interest to drain commissioners. Repealed by S.L. 1981, ch. 632, § 12.

61-21-05. Powers of board. Repealed by S.L. 1981, ch. 632, § 12.

61-21-06. Board's report to board of county commissioners - Contents - Inspection - Liability of drain commissioner on bond. Repealed by S.L. 1981, ch. 632, § 12.

61-21-07. Oath and bond filed by drain commissioners - Organization of board - Quorum. Repealed by S.L. 1981, ch. 632, § 12.

61-21-08. Office, records, clerk, and employment of personnel. Repealed by S.L. 1981, ch. 632, § 12.

61-21-09. Levy for administrative expense - Payment of commissioners' salaries and overhead expense. Repealed by S.L. 1981, ch. 632, § 12.

61-21-10. Petition for construction of drain - Purposes of drain - Signers to petition. A written petition for the construction of a drain may be made to the board. Such petition shall designate the starting point, terminus, and general course of the proposed drain. If among the leading purposes of the proposed drain are benefits to the health, convenience, or welfare of the people of any city, the petition shall be signed by a sufficient number of the property owners of such city to satisfy the board that there is a public demand for such drain. The petition shall be signed by at least six property owners or a majority of the landowners within the proposed district whose property will be drained by the proposed drain.

61-21-11. Bond required from petitioners. The board may require the petitioners referred to in section 61-21-10 to file a bond with the petition in a sum sufficient to pay all expenses of surveys and of the board should the petition be later denied. However, in no event shall the petitioners be required to pay expenses of surveys and of the water resource board, and any other expenses that may be incurred, if the petition is later approved, but the drain is not constructed.

61-21-12. Examination of line for drain - Designation of surveyor - Specifications - Cost estimates. Upon presentation of a petition as provided in section 61-21-10, the board shall examine the line of the proposed drain, and if in its opinion further proceedings are warranted, it shall adopt a resolution to that effect and designate a competent surveyor or engineer to assist the board. For the purpose of making examinations or surveys, the board or its employees may enter upon any land traversed by any proposed drain or any other lands necessary to gain access thereto. The surveyor or engineer shall prepare profiles, plans, and specifications of the proposed drain, estimates of the total cost thereof, and a map or plan of the lands to be drained showing the regular subdivisions thereof, which map or plan shall be filed in the office of the county auditor for inspection by the public. In determining the best location for the proposed drain, the board may in its discretion set the location on lines differing from the lines described in the petition. When the length of line described in the petition does not give sufficient fall to drain the land sought to be drained, the board may extend the drain below the outlet named in the petition. The estimate of costs prepared by the surveyor or engineer shall be in sufficient detail to allow the board to determine the probable share of the total costs that will be assessed against each of the affected landowners in the proposed drainage district.

61-21-13. Hearing on petition to establish drain and surveyor's report - Notice - Contents. Upon the filing of the surveyor's or engineer's report provided for in section 61-21-12, the board shall fix a date and place for public hearing on the petition. Such place of hearing shall be in the vicinity of the proposed drain and shall be convenient and accessible for the majority of the landowners subject to assessment for such drain or whose property shall be subject to condemnation for the proposed drain. At least ten days before such hearing the board shall file with the county auditor a list showing the percentage assessment against each parcel of land benefited by the proposed drain and the approximate assessment in terms of money apportioned thereto. Notice of such filing shall be included in the notice of hearing on the petition. At least ten days' notice of such hearing shall be given by publishing a notice at least once in the official newspaper of the county in which the proposed drain is located. In addition, each owner of land subject to assessment for the proposed drain and each landowner whose property shall be subject to condemnation for the proposed drain as shown by the record in the office of the recorder shall be mailed a notice of such hearing at the owner's post-office address as shown by such records. Notices of such hearing shall contain a copy of the petition and the time and place where the board will act upon the petition. The notice of hearing shall specify the point or place of beginning of the proposed drain and where it terminates, and shall describe the general course of the drain as finally determined by the engineer and the board. The notice of hearing shall also specify when and where votes for and against such proposed drain shall be filed. The final date when votes must be filed shall not be less than ten days after the date of the hearing on the petition. A form of ballot shall be mailed with the notice of hearing for use by the affected landowners in voting for or against the proposed drain. An affidavit of mailing signed by the attorney or clerk of the board or other person mailing such notices shall be filed with the county auditor who shall file such affidavit with the records of the proceedings pertaining to that drain. All persons whose land may be subject to assessment for such drain or whose property shall be subject to condemnation for such drain may appear before the board, fully express their opinions, and offer evidence upon the matters pertaining thereto.

61-21-14. Conduct of hearing on petition to establish drain. Prior to the hearing provided for in section 61-21-13, the board shall first prepare a roster or roll of affected landowners subject to assessment for such drain or whose property shall be subject to condemnation for such drain, and shall limit voting rights to such landowners. A record shall be made by the board of affected landowners present in person or by agent and such records shall be preserved in the minutes of the meeting. Affected landowners shall then be informed of the probable total cost of the project and their individual share of such cost and the amount of their property to be condemned for such project. The board shall fix a time, which shall not be less than ten days after the hearing on the petition, within which the votes for and against the establishment of the proposed drain shall be filed with the board. Objections to or approvals of the drain in writing may be filed with the board and shall be considered as votes for or against the proposed drain, as the case may be. A telegram shall be deemed writing, and any form of written approval or objection which sufficiently indicates the intention of the writer shall be sufficient. Once the deadline for filing votes for or against the proposed drain has been reached, no more votes for or against such drain shall be filed and no person shall withdraw that person's name from the list of those voting for or against the proposed drain after the deadline for filing votes has been reached. Any withdrawals of objections to or approvals of the proposed drain before that time shall be in writing only. When the votes of affected landowners have been filed and the deadline for filing votes for and against such drain has been reached, the board shall immediately proceed to determine whether or not more than fifty percent of the votes filed, as determined by section 61-21-16 are in favor of the construction of the drain. Until such determination is made, the board is without jurisdiction to take any further steps in the matter except to determine whether more than fifty percent of the votes filed are in favor of the drain and to adopt a resolution for discontinuance, if not more than fifty percent of the votes filed favor construction of the drain.

61-21-15. Denying or making order establishing drain - Costs when petition denied. If, upon the examination by the board before the survey has been made, or, if upon the hearing upon the petition or upon the trial in the district court, it shall appear that there was not sufficient cause for making such petition, or that the proposed drain would cost more than the amount of the benefits to be derived therefrom or that fifty percent or more of the votes of affected

landowners as determined by section 61-21-16, which were filed with the board, are opposed to such drain, the board shall deny the petition. An objection in writing filed with the board shall, as provided in section 61-21-13, be considered the same as a vote by ballot. The board may bring an action against the petitioners or upon their bond for all costs and expenses incurred in the proceedings, in which case the petitioners shall be jointly and severally liable, or the board may pay the costs and expenses out of any moneys available. If it shall appear, after due hearing as provided in sections 61-21-13 and 61-21-14, that the proposed drain will not cost more than the amount of the benefits to be derived therefrom and is approved by more than fifty percent of the votes of the affected landowners filed with the board as determined by section 61-21-16, the board shall make an order establishing the drain, accurately describing it, and giving the same a name under which it shall be recorded and indexed.

61-21-16. Voting right or power of landowners. In order that there may be a fair relation between the amount of liability for assessments and the power of objecting to the establishment of a proposed drain, the voice or vote of affected landowners on the question of establishing the drain shall be arrived at in the following manner:

The landowner or landowners of tracts of land affected by the drain shall have one vote for each dollar of assessment that the owner's land is subject to or one vote for each dollar of the assessed valuation of land condemned for the drain, as estimated by the board under the provisions of section 61-21-12. It is the intent of this subsection to allow one vote for each dollar of assessment, regardless of the number of owners of such tract of land. Where more than one owner of such land exists, the votes shall be prorated among them in accordance with each owner's interest.

A written power of attorney shall authorize an agent to cast the votes of any affected landowners.

61-21-17. Notice of order establishing drain and period for appeal. Upon the making of an order establishing or denying establishment of a drain, the board shall give notice to all affected landowners by publishing a notice in a newspaper of general circulation in the county. The notice must include a copy of the order and must advise the affected landowners of their right to appeal under section 61-21-18.

61-21-18. Appeal to district court - Time - Undertaking - Hearing. Any person whose land is assessed or may be assessed or is condemned or may be condemned for the construction of a drain under the provisions of this chapter may appeal to the district court from the order of the board establishing or denying the establishment of the drain. The appeal must be taken in accordance with the procedure provided in section 28-34-01. The appellant must give an undertaking to be approved by the clerk of the district court in the sum of two hundred fifty dollars for the payment of the costs in the event that the appellant is unsuccessful in the district court. The undertaking must run in favor of the county in which the drain is located, and, if located in more than one county, it may run in the name of either of the counties in which the drain is located. The judge shall hear the appeal not less than ten days nor more than thirty days after the filing of the appeal with the clerk, the day of hearing to be fixed by the court, but such time for hearing may be extended by the court for good cause for a period not to exceed thirty days. The case must be tried in all respects as a court case without a jury. Where the appeal is perfected, the district court upon the hearing may try and determine the question as to whether, in the first instance, there was sufficient cause for making the petition for the establishment of the drain, whether the proposed drain will cost more than the amount of the benefits to be derived therefrom, and whether such drain was objected to by a majority of the affected landowners in accordance with the weighted voting provisions of section 61-21-16.

61-21-19. Right of way - How acquired - Assessment of damages - Issuance of warrants. Subject to chapter 32-15, the right of way for the construction, operation, and maintenance of a proposed drain, if not conveyed to the county by the owner, may be acquired by eminent domain. If lands assessed for drainage benefits are not contiguous to the drain, access right of way thereto over the land of others may be acquired in the same manner. The right of way, when acquired, is the property of the county. The board may issue warrants in a sum sufficient to pay the damages assessed for the right of way. The warrants must be drawn

upon the proper county treasurer or, if the water resource district treasurer is custodian of the drain funds, water resource district treasurer, and are payable out of drain funds in the hands of the treasurer that have been collected for the construction of the drain for which the right of way is sought to be obtained. The board shall negotiate the warrants at not less than the par value thereof and shall pay into court for the benefit of the owners of the right of way the amount to which each is entitled according to the assessment of damages, paying the surplus, if any, to the county treasurer or water resource district treasurer, who shall place the same to the credit of the proper drain fund.

61-21-20. Assessing cost of constructing and maintaining drain. After the making of the order establishing the drain, the board shall assess the percentage of the cost of acquiring right of way and constructing and maintaining such drain in accordance with benefits received, against:

1. Any county, township, or city which is benefited thereby; and
2. Any lot, piece, parcel, or interest in land which is either directly or indirectly benefited by such drain or by such drain in connection with other existing or proposed drains.

No land already included in and being assessed by an existing drainage district shall be included and assessed in any newly formed drainage district unless it can be shown that such land will be benefited by the construction of the new drain. The board in considering the benefit and assessing the percentage of costs to each affected tract, parcel, or piece of land may, among other things, take into consideration the present drainage facilities under any existing drainage district, potential use of the proposed drain by such land, whether any such lands will be benefited or harmed by any change in the existing flow and course of drainage water by reason of the construction of the drain, and such other matters as may be pertinent to the question of benefits.

61-21-21. Assessment subject to review - Notice of time and place. The percentage assessments provided for in section 61-21-20 shall be subject to review, and ten days' notice of the time and place where such percentage assessments will be reviewed by the board shall be given by publication in a newspaper having general circulation in the county. In addition, each owner of land affected by the proposed drain as shown by the record in the office of the recorder or county treasurer shall be mailed a notice of such hearing at the owner's post-office address as shown by such records, and an affidavit of mailing shall be filed with the proceedings of such drain.

61-21-22. Hearing on assessment - Appeal to state engineer - Correction of assessments - Relocating drain - Fees of state engineer. At the hearing provided for in section 61-21-21, the board shall proceed to hear all complaints relative to the percentage assessments and shall correct or confirm the same. Should landowners subject to assessment or whose property is subject to condemnation for the construction of the proposed drain having a majority of the possible votes, as determined by section 61-21-16, believe that the assessment had not been fairly or equitably made, or that the drain is not properly located or designed, they may appeal to the state engineer by petition within ten days after the hearing on assessments, to make a review of such percentage assessments and to examine the location and design of the proposed drain. Upon the receipt of such petition the state engineer shall proceed to examine the lands assessed and the location and design of the proposed drain, and should it appear to the state engineer that such assessments have not been made equitably, the state engineer may proceed to correct the same, and the state engineer's correction and adjustment of said assessments shall be final. Should it appear that, in the judgment of the state engineer, the drain has been improperly located or designed, the state engineer may order a relocation and redesign. Such relocation and redesign shall be followed in the construction of the proposed drain. For the state engineer's services in making such review of assessments and examination of location and design, the state engineer shall be allowed ten dollars per day and actual and necessary expenses during the time the state engineer is engaged upon such work. All moneys received by the state engineer shall be paid into the state treasury and credited to the general fund. After the hearing provided in this section, the board shall make a finding that the benefits to

all tracts of land will exceed the costs that will be assessed against the lands. Any landowner who may claim that the landowner will receive no benefit at all from the construction of a new drain may appeal the question of whether there is any benefit to the state engineer upon the filing of a bond in the sum of two hundred fifty dollars with the board for the payment of the costs of the state engineer in the matter. The state engineer shall not determine the specific amount of benefits upon an appeal by an individual landowner, but shall only determine if there is any benefit to the landowner, and the determination of the state engineer upon such question shall be final.

61-21-23. Recording assessment. After the percentage assessment of benefits has been made, as provided in section 61-21-20 and confirmed upon hearing as provided in section 61-21-22, the board shall record such percentage assessments in the permanent records of the drain and such percentage assessment shall further be permanently recorded by the county auditor in a book of "drainage assessments".

61-21-24. Notice of letting of contracts. After the recording of percentage assessments as provided in section 61-21-23, the board shall then give at least ten days' notice of the time and place where contracts will be let for the construction of the drain. Such notice shall be published at least once in a newspaper having general circulation in the county.

61-21-25. Letting of contracts for drains. The board shall let contracts for the construction of the drain, culverts, bridges, and appurtenances thereto, or portions thereof in accordance with chapter 48-01.2.

61-21-26. Extension of time to contractors - Reletting unfinished part of contract. The board may grant a reasonable extension of time for the completion of any contract. When any contract shall not be finished within the time specified, or to which it may be extended, the board in its discretion at any time thereafter may relet such unfinished portion or any part thereof to the lowest responsible bidder, and shall take security as before. The cost of completing such unfinished portions over and above the contract price, and the expense of notices and reletting shall be collected by the board from the parties first contracting. In no case shall the board forfeit and annul a contract without giving five days' notice to the contractor, if the contractor can be found or has a known place of residence in the county. Such notice may be given to such contractor personally or may be left at the contractor's place of residence.

61-21-27. Apportionment and taxation of costs. After the letting of contracts or a portion thereof, the board shall compute the cost of the drain including estimated costs of any unfinished portions. The board shall determine the sum to be levied to pay such cost, which sum shall be prorated and assessed against lands in accordance with the percentage determined under section 61-21-20. A copy of the list of assessments shall be served on the clerk or auditor of each municipality against which taxes are to be assessed and shall also be filed in the office of the county auditor of the county or counties in which municipalities and lands benefited by the drain are situated. The provisions of section 61-21-52 shall apply to the levies and assessments provided for in this section.

61-21-28. Collection of drain taxes. The county treasurer shall collect the drain taxes and shall credit all moneys so collected to the drain fund to which they belong. The county treasurer shall act as the custodian of the drain funds unless the board of the water resource district having jurisdiction over the drain requests otherwise in writing. Upon receiving a written request from the water resource district board, the county treasurer shall pay all moneys collected, and the earnings thereon, to the treasurer of the water resource district, who shall then act as the custodian of the drain funds. A direction by a board is effective for all moneys then in the custody of the county treasurer and all moneys subsequently collected thereafter unless and until the board directs in writing that the county treasurer act as the custodian of the moneys.

61-21-29. Payment of costs and expenses of locating, constructing, maintaining, and improving drain - Warrants issued. Payment of all expenses and costs of locating and constructing a drain must be made upon order of the board and warrants therefor must be signed by the chairman and one other member of the board. All warrants drawn by the board in

payment of items of expense of a drain are payable from the proper drain fund and must be accepted by the treasurer in payment of taxes levied in regard to the drain. All warrants, after presentation to the county treasurer or, if the water resource district treasurer is custodian of the drain funds, the water resource district treasurer for payment, if not paid for want of funds, must be registered by the county treasurer or water resource district treasurer and thereafter bear interest at a rate not to exceed eight percent per annum. The county commissioners, by proper resolution, are authorized to purchase drainage warrants from general county funds in instances when the warrants will be funded by a bond issue within six months from the date of purchase.

61-21-30. Additional assessment to meet deficit or additional expense. In case the amount realized from the assessment made for the acquisition of right of way or for the construction, improvement, repair, and maintenance of any drain is not sufficient to pay all necessary expenses in regard thereto, or to pay and retire any bonds issued in connection with such operations, a further assessment shall be made to meet such deficit and such additional amount shall be levied and collected in the manner provided in sections 61-21-27, 61-21-28, and 61-21-52.

61-21-31. Drains along and across public roads and railroads. Drains may be laid along, within the limits of, or across any public road or highway, but not to the injury of such road. In instances where it shall be necessary to run a drain across such highway, the department of transportation, board of county commissioners, or the board of township supervisors, as the case may be, when notified by the board to do so, shall make necessary openings through such road or highway, and shall build and keep in repair all suitable culverts or bridges at its own expense, as provided under the applicable provisions of section 61-21-32. In instances where drains are laid along or within the limits of roads or highways, such drains shall be maintained and kept open by the board at the expense of the drainage district concerned. A drain may be laid along any railroad when necessary, but not to the injury of such road, and when it shall be necessary to run a drain across a railroad, the railroad company, when notified by the board to do so, shall make the necessary opening through said road and shall build suitable bridges and culverts and keep them in repair.

61-21-32. Construction of bridges and culverts - Cost. The board shall construct such bridges or culverts over or in connection with a drain as in its judgment may be necessary to furnish passage from one part to another of any private farm or tract of land intersected by such drain. The cost of the construction thereof shall be charged as part of the cost of constructing such drain, and such bridge or passageway shall be maintained under the authority of the board, and the necessary expense thereof shall be deemed a part of the cost of keeping such drain open and in repair. Whenever any bridge or culvert is to be constructed on a county or township highway system over and across or in connection with a drain, and the cost thereof shall exceed five hundred dollars, the cost of constructing such bridge or culvert shall be shared in the following manner: The state water commission may, if funds are available therefor, participate in the portion of the cost thereof that exceeds five hundred dollars in accordance with such rules and regulations as it may prescribe. The remaining cost thereof shall be borne on the basis of forty percent by the county and sixty percent by the water resource district or the drainage district which has created the need for such construction. If, however, moneys have not been made available to the commission for such participation, then and in that case, forty percent of the cost of a bridge or culvert costing in excess of one hundred dollars shall be paid by the county and sixty percent shall be charged as cost of the drain to the drainage district. Whenever any bridge or culvert costing one hundred dollars or less is needed on any such road the cost of such bridge or culvert shall be charged on the basis of sixty percent to the water resource district or the drainage district and forty percent shall be borne by the township in which such bridge or culvert is located.

In the case of such bridge or culvert construction where there is federal financial participation, if there are costs exceeding the amount of such federal participation then the excess balance shall be borne by the water resource district, drainage district, county, or township, according to the foregoing provisions of this section, as the case may be.

61-21-32.1. Culvert and pipe arch bids and acceptance. A board may advertise for bids to supply culverts and pipe arches and may accept one or more low bids. A board may utilize bids for such materials received by the county within which the board has jurisdiction and may accept one or more low bids. The board may then purchase materials from the accepted low bidder or bidders for a period of one year from the date of the original acceptance of the bids.

61-21-33. Boards of two or more counties may construct drains through counties. Whenever it shall be deemed necessary by the boards of two or more counties in this state to construct or extend a drain through or into two or more counties in this state, the several boards in the counties into or through which such proposed drain may extend when completed may establish, construct, and maintain such drain through or into two or more counties in the manner provided in section 61-21-34.

61-21-34. Procedure to construct or extend a drain through or into two or more counties. In order to construct or extend a drain through or into two or more counties in this state, a petition shall be presented to the several boards for the establishment of such drain in their several counties as provided in this chapter. The boards of such several counties shall hold a joint meeting and shall determine the necessity or expediency of the establishment of such drain. The several boards of all counties through or into which such proposed drain may run shall agree upon the proportion of damages and benefits to accrue to the lands affected in each county, and for this purpose they shall consider the entire course of said drain through all said counties as one drain. Should the boards fail to agree upon the benefits to accrue to the lands in each county, they shall submit the points in controversy to the state engineer of the water commission, and the state engineer's decision thereon shall be final. They may apportion the cost of establishing and constructing such entire drain ratably and equitably upon the lands in each such county in proportion to the benefits to accrue to such lands. When they have so apportioned the same, they shall make written reports of such apportionment to the auditors of the several counties affected, which reports shall show the portion of cost of such entire drain to be paid by taxes upon the lands in each of such counties and such reports shall be signed by the boards of all counties affected. Upon the filing of such reports, the several boards shall meet and assess against the lands in each of such counties, ratably and equitably as provided by this chapter, an amount sufficient to pay the proportion of the cost of such drain in each of such counties so fixed by all said boards. The provisions of this chapter relating to drains within a single county shall govern the establishment, construction, maintenance, repair, and cleanout of such drains.

61-21-35. Settlement of unpaid warrants. In the event that drain warrants which have been issued pursuant to the establishment of a drain in two or more counties remain unpaid and the amounts realized from the original assessments made are not sufficient to pay said warrants and an additional assessment would be necessary to meet such deficit, the board of county commissioners of any county affected, if such board finds that such county has received benefits from such drain by reasons of public health, convenience or welfare, as provided by law, and might therefore be liable for assessment or reassessment and that the credit of the county is or might be affected by the existence of such outstanding and unpaid warrants, may negotiate and execute a settlement with the owners of such warrants and pay the amount of such settlement from the general fund of the county.

61-21-36. Cooperating with drainage boards or officials of other states in drainage matters. Any board established under the laws of this state, either severally or jointly with other boards, may cooperate with any similar drainage districts or drainage boards in any adjoining state in the establishment of any drainage area or drainage basin for the control of boundary waters between such states.

61-21-37. Drainage boards or commissioners of different states may meet in joint conference to effectuate cooperation. In order to effectuate the cooperation provided for in section 61-21-36, any board may:

1. Meet in joint conference to agree upon joint plans of procedure.

2. Employ jointly with other similar boards a competent engineer.
3. Carry into effect the plans and suggestions adopted at any such joint conference in accordance with the laws of this state with reference to the construction of drains and drain improvements.
4. Assess the costs thereof upon the drainage district or area affected in accordance with the benefits received.

61-21-38. Proceedings in drainage matters other than establishment and construction of drains - Establishment of lateral drains. Unless otherwise specified, all proceedings under the provisions of this chapter affecting the rights of persons and property shall be taken in accordance with the procedure governing the establishment and construction of drains in the first instance, except that a petition for the establishment and construction of a lateral drain shall be sufficient if signed by one or more freeholders whose property will be affected by the lateral drain.

61-21-39. Petition for a lateral drain - Bond of petitioners - Penalty.

1. All property owners whose property would be affected by a lateral drain may jointly petition the board for the construction of such drain and shall deposit with the board a good and sufficient bond to be approved by the board, conditioned upon the petitioner or petitioners paying all costs of the proposed lateral drain. Whenever improvements of an original drain are made necessary by the construction of a lateral drain the costs of such improvements to the original drain shall be charged as part of the cost of construction of the lateral drain and assessed against the property benefited thereby and collected as other assessments are collected. In the event that the board shall determine that such improvements to the original drain are also beneficial to property served by the original drain, the board may assess such portion of the cost of the improvements as it shall determine to property benefited by the original drain. Unless the petitioners agree to construct the lateral drain, the board within ten days shall commence proceedings for the construction of such lateral drain according to the provisions of this chapter. No person shall dig or construct any lateral ditch or drain which will conduct the flow of water from any land or lands into any drain constructed under the provisions of this chapter, except the petitioners as provided in this section. In all instances involving the construction of a lateral drain, the board shall estimate and determine the proportionate share of the cost of the main or original drain which should be paid by such petitioners. The petitioners shall pay into the county treasury the amount so determined, and they shall then be allowed to connect such lateral ditches or drains with the original drain under the direction and superintendence of the board, but at their own cost and expense. The money paid into the county treasury shall be credited to the drainage fund of the specific drain involved.
2. Where one or more of the property owners to be benefited by the construction of a lateral drain or ditch petition the board for the construction of a lateral drain or ditch, the board shall then proceed in the same manner as is used for the establishment of a new drain and thereafter such lateral drain shall constitute a part of the original drain to which it is connected and the affected property shall be a part of such drainage district.
3. Repealed by S.L. 1975, ch. 569, § 4.
4. Any person violating any of the provisions of this section shall be guilty of a class B misdemeanor.

61-21-40. Collection of tax or assessment levied not to be enjoined or declared void - Exceptions. The collection of any tax or assessment levied or ordered to be levied to pay

for the location and construction of any drain laid out and constructed under the provisions of this chapter shall not be enjoined perpetually or absolutely declared void by reason:

1. Of any error of any officer or board in the location and establishment thereof;
2. Of any error or informality appearing in the record of the proceedings by which any drain shall have been located or established; or
3. Of a lack of any proper conveyance or condemnation of the right of way.

The court in which any proceeding may be brought to reverse or to declare void the proceedings by which any drain has been located or established, or to enjoin the tax levied to pay therefor, on application of either party, shall appoint such person or persons to examine the premises, or to survey the same, or both, as may be deemed necessary. The court, on a final hearing, shall make such order in the premises as shall be just and equitable, and may order such tax or any part thereof to remain on the tax lists for collection, or if the same shall have been paid under protest, shall order the whole or such part thereof as may be just and equitable to be refunded. The costs of such proceedings shall be apportioned among the parties as justice may require.

61-21-41. Establishing new drains in location of invalid or abandoned drain. If any of the proceedings for the location, establishment, or construction of any drain under the provisions of this chapter shall have been enjoined, vacated, set aside, declared void, or voluntarily abandoned by the board, for any reason whatsoever, the board may proceed under the provisions of this chapter to locate, establish, and construct a new drain at substantially the same location as the abandoned or invalid drain. For the purposes of this chapter, a drain that is not maintained shall be considered abandoned. When a new drain is established at substantially the same location, the board shall ascertain the real value of services rendered, moneys expended, and work done under the invalid or abandoned proceedings and the extent to which the same contributes to the construction and completion of the new drain. The board shall then issue warrants in an amount not exceeding the value to the new drain of the work completed on the invalid or abandoned drain and shall deliver such new warrants, pro rata, to the owners or holders of old warrants or bonds issued under the invalid or abandoned drainage proceedings, upon the surrender of such old warrants or bonds by the holder or holders thereof.

61-21-42. Drain kept open and in repair by board. All drains that have been constructed in this state except township drains shall be under the charge of the board and it shall be the duty of the board to keep such drains open and in good repair. When a drain is situated in more than one county, the drainage board of each county shall have charge of the maintenance of that portion of the drain located in its county. It shall be the mandatory duty of the board, within the limits of available funds, to clean out and repair any drain when requested to do so by petition of fifty-one percent of the affected landowners. The percentage of affected landowners of record in the treasurer's office or recorder's office favoring such cleaning out or repairing shall be determined by the weighted voting method as provided in section 61-21-16.

61-21-43. Assessment of costs of cleaning and repairing drains. The cost of cleaning out and repairing a drain or a drainage structure constructed by any governmental entity for which no continuing funds for maintenance are available must be assessed pro rata against the lands benefited in the same proportion as the original assessment of the costs in establishing such drain, or in accordance with any reassessment of benefits in instances where there has been a reassessment of benefits under the provisions of section 61-21-44. In cases where no assessment for construction costs or reassessment of benefits has been made, the board shall make assessments for the cost of cleaning and repairing such drain or drainage structure constructed by any governmental entity for which no continuing funds for maintenance are available after a hearing thereon as prescribed in this chapter in the case of a hearing on the petition for the establishment of a new drain. The governing body of any incorporated city, by agreement with the board, is authorized to contribute to the cost of cleaning out, repairing, and maintaining a drain in excess of the amount assessed under this section, and such excess contribution may be expended for such purposes by the board.

61-21-43.1. Removal of obstructions to drain - Notice and hearing - Appeal - Injunction. If the board determines that an obstruction to a drain, including if the drain is located within a road ditch, has been caused by the negligent act or omission of a landowner or landowner's tenant, the board shall notify the landowner by registered mail at the landowner's post office of record. A copy of the notice must also be sent to the tenant, if any. The notice must specify the nature and extent of the obstruction, the opinion of the board as to its cause, and must state that if the obstruction is not removed within the period the board determines, but not less than fifteen days, the board shall procure removal of the obstruction and assess the cost of the removal, or the portion the board determines, against the property of the landowner responsible. The notice must also state that the affected landowner, within fifteen days of the date the notice is mailed, may demand in writing a hearing upon the matter. Upon receipt of the demand the board shall set a hearing date within fifteen days from the date the demand is received. In the event of an emergency the board may, immediately upon learning of the existence of the obstruction, apply to a court of proper jurisdiction for an injunction prohibiting the landowner or landowner's tenant to maintain the obstruction. Assessments levied under this section must be collected in the same manner as other assessments authorized by this chapter. If, in the opinion of the board, more than one landowner or tenant has been responsible, the costs may be assessed on a pro rata basis in accordance with the proportionate responsibility of the landowners. A landowner aggrieved by action of the board under this section may appeal the decision of the board to the district court of the county in which the land is located in accordance with the procedure provided for in section 28-34-01. A hearing as provided for in this section is not a prerequisite to an appeal. If the obstruction is located in a road ditch, the timing and method of removal must be approved by the appropriate road authority before the notice required by this section is given and appropriate construction site protection standards must be followed.

61-21-44. Reassessment of benefits. The board may hold at any time and, upon petition of any affected landowner after a drain has been in existence for at least one year, shall hold a hearing for the purpose of determining the benefits of such drain to each tract of land affected. At least ten days' notice of such hearing must be given by publication in a newspaper having general circulation in the county and by mailing notice thereof to each owner of land whose assessment is proposed to be raised as determined by the records of the recorder or county treasurer. The provisions of this chapter governing the original determination of benefits and assessment of costs apply to any reassessment of benefits carried out under this section. The board may not be forced to make such reassessment more than once every ten years, nor may any assessment or balance thereof supporting a drainage fund be reduced or impaired by reassessment or otherwise as long as bonds payable out of such fund remain unpaid and moneys are not available in such fund to pay all such bonds in full, with interest.

61-21-45. Contracts for work of cleaning and repairing drains. If the cost of any work of cleaning out or repairing any drain, or system of legal drains, if more than one cleaning or repair project is carried on under one contract, does not exceed the amount provided for construction of a public improvement under section 48-01.2-02 in any one year, the work may be done on a day work basis or a contract may be let without being advertised. When the cost of such work exceeds the amount provided for construction of a public improvement under section 48-01.2-02 in any one year, a contract must be let in accordance with chapter 48-01.2. The competitive bid requirement is waived, upon the determination of the board that an emergency situation exists requiring the prompt repair of a project, and a contract may be made for the prompt repair of the project without seeking bids.

61-21-46. Maximum levy - Accumulation of fund. The levy in any year for cleaning out and repairing a drain may not exceed two dollars per acre [.40 hectare] on any agricultural lands in the drainage district.

1. Agricultural lands that carried the highest assessment when the drain was originally established, or received the most benefits under a reassessment of benefits, may be assessed the maximum amount of two dollars per acre [.40 hectare]. The assessment of other agricultural lands in the district must be based upon the proportion that the assessment of benefits at the time of construction or at the time of any reassessment of benefits bears to the assessment of the benefits of the

agricultural land assessed the full two dollars per acre [.40 hectare]. Nonagricultural property must be assessed the sum in any one year as the ratio of the benefits under the original assessments or any reassessments bears to the assessment of agricultural land bearing the highest assessment.

2. Agricultural lands must be assessed uniformly throughout the entire assessed area. Nonagricultural property must be assessed an amount not to exceed one dollar for each five hundred dollars of taxable valuation of the nonagricultural property.

In case the maximum levy or assessment on agricultural and nonagricultural property for any year will not produce an amount sufficient to cover the cost of cleaning out and repairing the drain, the board may accumulate a fund in an amount not exceeding the sum produced by the maximum permissible levy for six years. If the cost of, or obligation for, the cleaning and repair of any drain exceeds the total amount that can be levied by the board in any six-year period, the board shall obtain an affirmative vote of the majority of the landowners as determined by section 61-21-16 before obligating the district for the costs.

61-21-47. Expenditures in excess of maximum levy. If the cost of maintenance, cleaning out, and repairing any drain shall exceed the amount produced by the maximum levy of one dollar and fifty cents per acre [.40 hectare] in any year, with the amount accumulated in the drainage fund, the board may proceed with such cleaning out and make an additional levy only upon petition of at least sixty-one percent of the affected landowners. The percentage of the affected landowners signing such petition shall be determined in accordance with the weighted voting provisions in section 61-21-16.

61-21-48. Reconveyance of land no longer required for drainage purposes. Whenever land has been acquired for drainage purposes and is no longer required for such use, the board of county commissioners may reconvey such land to the present owner of the adjacent property if such party in payment thereof surrenders all warrants issued in payment of the land or repays the amount of cash paid therefor.

61-21-49. County may pay share of drainage taxes on tax deed lands. If lands acquired by the county by tax deed are assessed drainage taxes, the county commissioners shall pay such taxes from general funds if it appears after a due appraisal that the value of the land exceeds the total of the delinquent taxes for which foreclosure proceedings were instituted plus the total drainage tax assessment. If the total of taxes assessed at foreclosure plus drainage taxes exceeds the value of the land, the county shall not pay the drainage assessments but upon sale of such land any excess of the sales price over and above the amount of taxes for which the foreclosure proceedings were instituted shall be paid to the drainage district to the full extent of drainage taxes due. Any income from the property shall be first credited to the general taxes and any surplus income shall be paid to the drainage district to the extent of drainage taxes due.

61-21-50. Drain warrants - Terms and amounts. Drain costs must be paid upon order of the board by warrants signed by the chairman and one other member of the board. The warrants are payable from the proper drain fund and, upon maturity, are receivable by the treasurer for drain assessments supporting the fund. The warrants may be issued at any time after the order establishing the drain has become final and after incurring liability to pay for drain work to be financed by drain assessments and in anticipation of levy and collection of the assessments. Every warrant not made payable on demand must specify the date when it becomes payable. Demand warrants not paid for want of funds must be registered by the county treasurer or, if the water resource district treasurer is custodian of the drain funds, the water resource district treasurer and bear interest at a rate determined by the board, not exceeding eight percent per annum. Warrants of specified maturities bear interest according to their provisions at a rate or rates resulting in an average net interest cost not exceeding twelve percent per annum if sold at private sale, and may be issued with interest coupons attached. There is no interest rate ceiling on warrants sold at public sale or to the state of North Dakota or any of its agencies or instrumentalities. All drain warrants must state upon their face the purpose for which they are issued and the drain fund from which they are payable. The warrants may be used to pay drain obligations, or may be sold at not less than ninety-eight percent of par value, provided

that the proceeds of warrants sold are placed in the proper drain fund and used exclusively for drain expenses. Any unpaid warrants issued for the acquisition of right of way or the construction of a drain, including all incidental costs in connection therewith, must be funded by a bond issue within one hundred eighty days from and after the filing of the assessment of all costs with the county auditor as provided in section 61-21-27, but this requirement may not be construed as prohibiting the funding of warrants or the issuance of bonds after the one hundred eighty-day period.

61-21-51. Payment of drain assessments - Interest. Drain assessments may be paid in full or in part at any time after the same have been filed in the office of the county auditor, provided that all such assessments shall bear interest at a rate to be set by the board, which rate shall be not less than the rate payable on warrants or bonds issued for the drain financed by such warrants or bonds. Interest shall be computed from the date of filing the assessment list in the office of the county auditor, or, where bonds are issued for right of way or for construction, extension, or renovation, from the date of first publication of the preliminary bond issue resolution, whichever date is the earlier.

61-21-52. Lien for and enforcement of drain assessments. Drain costs determined by the board shall be extended upon the proper assessment list of benefited tracts in specific amounts computed according to the proportionate benefits found for each tract affected by the drain or by work done on the drain. A true copy of every such list affecting lands in a city shall be served on the auditor thereof promptly following completion. The assessment list shall then be filed in the office of the county auditor of the proper county or counties and said auditor shall extend upon the tax lists against the land affected, the specific amounts of the drain assessments according to the drain assessment list prepared by the board. From and after the filing of a drain assessment list with the county auditor the specific amounts levied and assessed against each benefited tract shall constitute a special tax thereon and shall be a lien upon such tract until fully paid. Such lien shall have precedence over all other liens except general tax liens, and shall be of equal rank and order with the lien of general taxes and shall not be divested by any judicial sale, tax sale, or foreclosure. This chapter shall be notice to all subsequent encumbrancers of the superior rank of drain liens imposed under the provisions hereof. Special drain taxes shall be collected and enforced as other taxes are collected and enforced and in the same manner as is provided in title 57. If no satisfaction of tax lien is made, the affected property shall pass absolutely to the board on foreclosure of tax lien provided the board pays the amount for satisfaction of lien, except the amounts of drain assessments, and may thereafter be sold by the board at public sale. The governing body of each city against which a drain assessment is made shall include in the earliest possible tax levy the amount assessed against it by the board, which amount shall be extended against all of the taxable property in such city as general taxes are extended, and such levy shall be over and above mill levy limitations prescribed by law. When the cost of any drain, or of an extension or enlargement or renovation thereof, shall be in such amount that the board finds that assessment of such total cost against the affected property for collection in full in a single payment would be unduly burdensome to such property, the board may determine to divide such cost into equal annual amounts to be assessed and collected over a period of not more than fifteen years. Drain costs and drain assessments shall include all expenditures for work and materials for the drain, including anticipated expenses, interest charges, and a reasonable charge for the establishment of a reserve fund with which the board may from time to time purchase tax delinquent property affected by the drain.

61-21-53. Drain bonds. The board may issue bonds to finance acquiring drain right of way, locating and constructing drains, and funding unpaid drain warrants heretofore issued, or issued hereafter under this chapter. Drain bonds issued in whole or in part to finance expenditures for which warrants have not been issued shall not be authorized until after firm contracts for projected drain work have been made and proper undertakings therefor have been executed and filed, or until after the drain work has been completed. Proceedings for the issuance of bonds shall be initiated by the adoption of a preliminary resolution of the board which shall include information and findings as follows:

1. The maximum amount of drain bonds proposed to be issued.

2. The maximum interest rate such bonds shall bear.
3. Designation of the calendar years in which such bonds shall mature.
4. The complete name of the drain for which such bonds are to be issued.
5. The purpose or purposes for which the proceeds of the bonds will be used, including the total amount of drain warrants to be bought with such proceeds.

When such preliminary resolution has been duly adopted by the board, the board shall proceed to have the text thereof published in a legal newspaper of general circulation in the locality in which the particular drain is situated, and there shall be published with and as a part of such text a statement that from and after the expiration of thirty days next following the date of the first printing of such text, no action may be commenced or maintained, and no defense or counterclaim may be recognized in the courts of this state to question or impair the drain warrants resolved to be funded, or the drain assessments supporting such warrants. There shall also be included in such publication the further statement that a complete list identifying the drain warrants proposed to be funded has been filed in the office of the county auditor of the county or counties in which the affected lands are located. Such publication shall be made once each week for three successive weeks and proper proof thereof shall be filed with the board. The validity and enforceability of any drain warrant or of any assessment supporting the same shall not be vulnerable to attack in the courts of this state unless an appropriate action or proceeding is commenced or a defense or counterclaim is served within thirty days next following the date of first printing of such publication. The board shall prepare and file with the auditor of the proper county or counties a complete list identifying the drain warrants proposed to be funded by such bonds, and such list, or true copies thereof, shall be filed prior to the date of first printing of said preliminary resolution. Within a reasonable time, and more than thirty days after the first printing of such preliminary resolution, the board may proceed to authorize the preparation and sale of drain bonds in accordance with such resolution. The bonds shall bear interest at a rate or rates resulting in an average net interest cost not to exceed twelve percent per annum on those issues which are sold at private sale. There is no interest rate ceiling on those issues sold at public sale or to the state of North Dakota or any of its agencies or instrumentalities. The bonds shall contain a provision that interest thereon shall cease at maturity unless the holder shall present the same for payment and payment is refused, shall designate the fund from which they are payable, and shall be offered for sale and sold as provided in chapter 21-03, for the offering and sale of general obligation bonds of governmental subdivisions of this state. Wherever drain bonds are issued for drain warrants, the bonds in the appropriate amount may be exchanged for the warrants, but the basis of exchange shall be such that the average net rate of interest on the bonds will not exceed the rate on the warrants refunded. Drain warrants purchased with the proceeds of bonds shall not be canceled but shall be retained by the board as assets of the drain fund from which the warrants are payable. The fund shall be continued and payments therefrom shall be made on the warrants drawn thereon without reference to the bond issue, but all such payments shall be placed in the fund from which the bonds are payable and shall be applied to service such bonds and to pay the interest thereon. Bonds issued by drainage districts shall be eligible for purchase by the various trust funds of the state of North Dakota and its instrumentalities.

61-21-54. Sinking funds and bonds. The board shall establish a sinking fund for each issue of bonds, which fund shall consist of all drain assessments made for the bonds, all warrants funded and all assessments for such warrants, all accrued interest received on sale of bonds, all proceeds of bonds sold not actually expended for the drain, the reserve fund authorized for purchase of tax delinquent lands affected by the drain, all general tax levies for payment of obligations of the drain and any other moneys which may be appropriated to the sinking fund. Separate sinking funds shall be provided for each separate drain for which bonds shall have been issued. Until the purpose of the sinking fund has been fulfilled, no moneys in any such sinking fund shall be applied to any purpose other than payment of the bonds for which such fund was created.

61-21-55. Liability for deficiencies - Maintenance of sinking fund. During the month of June of each year the board shall prepare a complete statement of the condition of the finances of each drain and shall cause the same to be filed with the county auditor on or before July first next following. At its July meeting next following the filing of each statement of financial condition of any drain, the county board shall examine such statement and determine whether or not any drain has defaulted or will default on its financial obligations. Where it appears to the county board that any drain does not have moneys and drain assessments receivable equal to one hundred percent of its obligations coming due within thirteen months next following, the county board shall pay from the county general fund into the sinking fund for drain warrants or bonds or shall proceed to levy a general property tax, the proceeds of which, together with drain moneys on hand and the probable prior yield of drain assessments will amount to one hundred ten percent of the obligations of the drain becoming due during the thirteen months next following. Such tax or payments shall be appropriated to the sinking fund for the drain warrants or bonds, and certificates of indebtedness may be issued against the same as levied. On redemption of all warrants or bonds against any sinking fund, or upon accumulation of moneys in such fund sufficient to redeem all outstanding warrants or bonds, all surplus moneys in such fund shall be payable to the general fund of the county or counties levying general property taxes or making such payments, up to the amounts of such levies or payments.

61-21-56. Dissolution of drainage district - Return of unexpended assessments. The owners of property subject to fifty-one percent or more of the liability for maintaining any drain as determined in section 61-21-16 may petition the board for the abandonment and dissolution of such drain. Upon receipt of such petition, the board shall call a public hearing on the petition and if they find the number of valid signatures to represent property liable to fifty-one percent or more of the cost of upkeep of such drain, as determined by section 61-21-16, and that such drainage district has no outstanding indebtedness, the board shall then declare such drain to be abandoned and such drainage district to be dissolved, shall record such declaration upon the minutes and publish the same in a newspaper having wide circulation in that county, and shall return all unexpended assessments collected for the maintenance of the drain to the owners of the assessed property on a pro rata basis in proportion with the amount originally assessed. In case the drainage district extends into two or more counties, the board upon receipt of the petition above referred to shall convene in joint session and call the public meeting above provided. When a drain has been abandoned and dissolved, it may then be reestablished in whole or in part only in the same way as a new drain is established.

61-21-57. Penalty for violation of rules and regulations. If any person shall violate any valid rule or regulation promulgated by the board, that person shall be guilty of an infraction. The board may bring a civil action to recover damages resulting from violations, plus costs of suit, and all sums recovered shall be deposited with the county treasurer to the credit of the proper drain fund.

61-21-58. Existing obligations and regulations. The passage of this chapter shall not affect the validity of any valid outstanding warrants, bonds, or other obligations of drainage districts and all sinking funds created for the payment of such obligations shall continue in force until the liquidation of such obligations. All valid rules and regulations promulgated by any board of county commissioners or board of drainage commissioners shall remain in full force and effect until altered or repealed by the board in the county concerned.

61-21-59. City application for joint drain. Repealed by omission from this code.

61-21-60. Hearing on city joint drain. Repealed by omission from this code.

61-21-61. Payments for city joint drain. Repealed by omission from this code.

61-21-62. Board may apportion assessments for benefits of an established drain against a county or city or any tract of land benefited by an established drain. Whenever a board discovers or ascertains that the county, a township, or city therein, or that any tract, parcel, or piece of land is being benefited by an established drain and that the county or such township, municipality, tract, piece, or parcel of land was not included in the drainage area assessed for the

cost of construction and maintenance of the drain when established, the board shall commence proceedings for reassessment of lands originally assessed for the cost of establishing and constructing such drain and shall apportion and assess the part of the balance remaining unpaid, if any, of the cost of such drain, and the expense of maintenance thereof, which such county, township, or city and each tract of land found benefited thereby should bear.

Before making such reassessment or reapportionment of benefits, the board shall hold a hearing for the purpose of determining the benefits of the drain to the county, such township, or city and to each tract, piece, or parcel of land being benefited. At least ten days' notice of such hearing shall be given by publication in a newspaper having general circulation in the county and by mailing notice thereof to each owner of land assessed for the cost of construction and maintenance when the drain was established, and by mailing such notice to the governing board of the county, township, and municipality and to the owner of each tract, piece, or parcel of land found to be benefited since the establishment of the drain, as determined by the records in the office of the recorder or county treasurer. The provisions of this chapter governing the original determination of benefits and assessment of costs shall apply to the reassessment and assessment of benefits carried out under the provisions of this section.

61-21-63. Drains having a common outlet may be consolidated. Whenever one or more drains which have from time to time been constructed, empty into a drain that supplies the outlet for waters flowing in all such drains, such drains may by resolution or order of the board, if the cost of construction of such drains has been paid, be consolidated into one drain or drainage system and shall be renumbered and may be renamed.

61-21-64. Outlets. Subject to chapter 32-15, a board may, if found necessary, by process of eminent domain acquire land needed for a sufficient outlet for any established drain.

61-21-65. Consolidation of drainage district or districts into water resource districts. Upon resolution of the board of county commissioners or the water resource board, or upon the filing with the board of county commissioners of a petition containing the signatures of landowners possessing at least fifteen percent of the voting rights in one or more drainage districts, computed in accordance with section 61-21-16, the board of county commissioners shall set a date for hearing upon the establishment or expansion of a water resource district to include the property contained within the drainage district or districts. The board of county commissioners shall publish notice of the time, place, and purpose of the hearing once each week for two consecutive weeks, in a newspaper of general circulation in the county, the second publication to be not less than ten nor more than twenty days before the date set for hearing. In the event special assessments remain outstanding upon any property within a drainage district to be affected by a hearing as provided in this section, the board of county commissioners shall notify by ordinary mail at least ten days before the date set for the hearing, all landowners of record subject to the special assessments in accordance with the provisions of section 61-21-66. If, at the time and place set for hearing, a majority of affected landowners computed in accordance with section 61-21-16 shall file written objections, further proceedings shall be discontinued. If such majority does not object, the board of county commissioners shall file with the state water commission a petition signed by a majority of the board and all further proceedings shall thereafter be governed by chapters 61-16 and 61-16.1. Upon the establishment or expansion of a water resource district to include one or more drainage districts the board of county commissioners shall, by resolution, dissolve the drainage districts and transfer all property of the dissolved districts to the water resource district.

61-21-66. Dissolution prohibited when liabilities outstanding - Disposition of assets. Notwithstanding the provisions of section 61-21-65, no drainage district shall be dissolved if such district has any outstanding warrants, bonds, or other obligations unless the order of the board of county commissioners dissolving such district shall provide for a continuance of assessments upon properties within the dissolved district for the payment of outstanding obligations, or an assumption of such obligations by the newly created district and the spreading of such assessments over properties within the newly created district. All sinking funds created for the payment of such obligations shall be continued in force by the new district until the liquidation of such obligations. Any funds in the treasury of the drainage district shall,

upon dissolution under the provisions of section 61-21-65, be transferred to the treasury of the water resource district. Such funds may be expended separately or jointly with other funds on projects or activities of the water resource district which are of specific benefit to property in the dissolved drainage district from whence the funds were transferred or, in the discretion of the board of county commissioners, such funds may be prorated among the properties in the dissolved drainage district and credited to such property in proportion with the amount originally assessed as a credit against subsequent assessments by the water resource district.

61-21-67. Closing of noncomplying drain - Notice and hearing - Appeal - Injunction.

If the board determines that a drain, lateral drain, or ditch has been opened or established by a landowner or tenant contrary to this chapter or any rules adopted by the board, the board shall notify the landowner by registered mail at the landowner's post office of record. A copy of the notice must also be sent to the tenant, if any. The notice must specify the nature and extent of the noncompliance and must state that if the drain, lateral drain, or ditch is not closed or filled within the period the board determines, but not less than fifteen days, the board shall procure the closing or filling of the drain, lateral drain, or ditch and assess the cost of the closing or filling, or the portion the board determines, against the property of the landowner responsible. The notice must also state that the affected landowner, within fifteen days of the date the notice is mailed, may demand in writing a hearing upon the matter. Upon receipt of the demand, the board shall set a hearing date within fifteen days from the date the demand is received. In the event of an emergency, the board may immediately apply to the appropriate district court for an injunction prohibiting the landowner or tenant from maintaining the drain, lateral drain, or ditch. Assessments levied under this section must be collected in the same manner as other assessments authorized by this chapter. If, in the opinion of the board, more than one landowner or tenant has been responsible, the costs may be assessed on a pro rata basis in accordance with the proportionate responsibility of the landowners. A landowner aggrieved by action of the board under this section may appeal the decision of the board to the district court of the county in which the land is located in accordance with the procedure provided for in section 28-34-01. A hearing as provided for in this section is not a prerequisite to an appeal.

**CHAPTER 61-21.1
WATER PROJECT DEVELOPMENT**

<u>Section</u>		<u>Page</u>
61-21.1-01	Definitions	61-21.1: 1
61-21.1-02	Industrial commission to issue bonds - Program administered by commissioner of agriculture	61-21.1: 1
61-21.1-03	Contents of application - Approval by water commission	61-21.1: 1
61-21.1-04	Review of applications - Conditions - Approval	61-21.1: 2
61-21.1-05	Meritorious and feasible water project - Determination	61-21.1: 2
61-21.1-06	Eminent domain unaffected	61-21.1: 2
61-21.1-07	Assumption of liability - Condition to obtaining funding	61-21.1: 2

CHAPTER 61-21.1 WATER PROJECT DEVELOPMENT

61-21.1-01. Definitions. In this chapter, unless the context or subject matter otherwise requires:

1. "Commission" means the state water commission.
2. "Cost of works" means necessary costs for designing, engineering, surveying, and construction of a water project.
3. "Landowner" means any person who holds ownership rights in real estate sufficient to have a legally protectable interest in the real estate, including a tenancy or leasehold interest.
4. "Lender" includes the Bank of North Dakota.
5. "Person" does not include any governmental entity or an urban or rural water users association.
6. "Water project" means any project for conserving, draining, and distributing water, including reservoirs, dams, diversion canals, distribution canals, channels, ditches, lateral ditches, drains, dikes, and pumping units, constructed for the purpose of irrigation, watering stock, or supplying water for domestic, agricultural, recreational, fish and wildlife use, flood control, drainage, water conservation and regulation, storage, diversion, or carrying of water.

61-21.1-02. Industrial commission to issue bonds - Program administered by agriculture commissioner. Bonds may be issued by the industrial commission pursuant to chapter 4-36 for the purpose of making loans to lenders and requiring the proceeds of the loans to be used by the lenders to make loans to landowners for water projects. The industrial commission, for the administration of the program established pursuant to this chapter, may delegate to the agriculture commissioner, and the agriculture commissioner is authorized to exercise, all administrative powers granted to the industrial commission pursuant to chapter 4-36.

61-21.1-03. Contents of application - Approval by water commission. A water project and the cost of works must be approved by the commission before a loan to finance the cost of works is eligible to be made by a lender with the proceeds of a loan from the industrial commission. An application for approval must be in writing in a form prescribed by the commission and must include:

1. The name and address of the applicant;
2. An economic analysis of the water project;
3. An engineering analysis of the water project;
4. An analysis of the water project's impact upon surrounding land and landowners;
5. Copies of all governmental permits and licenses and private rights or permissions required to complete the water project;
6. Maps, plans, and other documentation describing the water project and its location;
7. Proof of the necessary ownership rights to construct the water project; and
8. Any other information the commission may require.

61-21.1-04. Review of applications - Conditions - Approval. An applicant shall submit the application to the commission. The commission shall review all applications received. If the commission determines that further information is required or that the proposed water project is not meritorious or feasible, the application must be returned to the applicant. Upon return of the application, an applicant may provide the information or make necessary modifications and refile the application. An application that has been returned twice may not be resubmitted without prior approval of the commission. If no further information is required and the commission determines that the proposed water project is meritorious and feasible, the commission shall approve the application and forward it to the agriculture commissioner.

61-21.1-05. Meritorious and feasible water project - Determination. A water project is meritorious and feasible if it meets the following criteria:

1. The benefit of the water project must exceed all costs of the water project, or be beneficial for water conservation, fish and wildlife, and recreation use.
2. The water project must be designed, engineered, surveyed, and constructed in a safe manner using existing proven knowledge and techniques.
3. All governmental permits and rights and private rights or permissions required to complete the water project must be obtained.

61-21.1-06. Eminent domain unaffected. The approval or provision of financial assistance for any water project under this chapter does not change the right of any entity to exercise the power of eminent domain. The exercise of the power of eminent domain under this chapter is subject to chapter 32-15.

61-21.1-07. Assumption of liability - Condition to obtaining funding. The state assumes no liability and provides no guarantee that a water project that is financially assisted under this chapter will not cause damages or will operate as expected. In order to obtain any financial assistance under this chapter, a landowner shall agree in writing to indemnify and hold harmless the state, its employees, and its agents and assigns, for any liability or claim of liability arising from the establishment, construction, reconstruction, repair, maintenance, or operation of the water project.

**CHAPTER 61-23
YELLOWSTONE RIVER COMPACT**

		<u>Page</u>
<u>Section</u>		
61-23-01	Ratification of Yellowstone River Compact between the states of Montana, North Dakota, and Wyoming.....	61-23: 1
61-23-02	Compact not binding until approved by other states and the Congress of the United States - Governor to give notice of ratification	61-23: 8

CHAPTER 61-23

YELLOWSTONE RIVER COMPACT

61-23-01. Ratification of Yellowstone River Compact between the states of Montana, North Dakota, and Wyoming. The legislative assembly of the state of North Dakota hereby approves and ratifies the compact designated as the "Yellowstone River Pact", dated at the city of Billings, state of Montana, on the eighth day of December 1950. Signed by I. A. Acker, Einar H. Dahl, and J. J. Walsh as the state representatives of the state of North Dakota on a compact commission between the states of Montana, North Dakota, and Wyoming, which compact is as follows:

Yellowstone River Compact

The state of Montana, the state of North Dakota, and the state of Wyoming, being moved by consideration of interstate comity, and desiring to remove all causes of present and future controversy between said states and between persons in one and persons in another with respect to the waters of the Yellowstone River and its tributaries, other than waters within or waters which contribute to the flow of streams within the Yellowstone National Park, and desiring to provide for an equitable division and apportionment of such waters, and to encourage the beneficial development and use thereof, acknowledging that in future projects or programs for the regulation, control, and use of water in the Yellowstone River basin the great importance of water for irrigation in the signatory states shall be recognized, have resolved to conclude a compact as authorized under the Act of Congress of the United States of America, approved June 2, 1949 [Public Law 83, 81st Congress, First Session], for the attainment of these purposes, and to that end, through their respective governments, have named as their respective commissioners:

For the state of Montana: Fred E. Buck, A. W. Bradshaw, H. W. Bunston, John Herzog, John M. Jarussi, Ashton Jones, Chris Josephson, A. Wallace Kingsbury, P. F. Leonard, Walter M. McLaughlin, Dave M. Manning, Joseph Muggli, Chester E. Onstad, Ed F. Parriott, R. B. Renne, Keith W. Trout;

For the state of North Dakota: I. A. Acker, Einar H. Dahl, J. J. Walsh;

For the state of Wyoming: L. C. Bishop, Earl T. Bower, J. Harold Cash, Ben F. Cochrane, Ernest J. Goppert, Richard L. Greene, E. C. Gwillim, E. J. Johnson, Lee E. Keith, N. V. Kurtz, Harry L. Littlefield, R. E. McNally, Will G. Metz, Mark M. Partridge, Alonzo R. Shreve, Charles M. Smith, Leonard F. Thornton, M. B. Walker who, after negotiations participated in by R. J. Newell, appointed as the representative of the United States of America, have agreed upon the following articles, to wit:

ARTICLE I.

- A. Where the name of a state is used in this compact, as a party thereto, it shall be construed to include the individuals, corporations, partnerships, associations, districts, administrative departments, bureaus, political subdivisions, agencies, persons, permittees, appropriators, and all others using, claiming, or in any manner asserting any right to the use of the waters of the Yellowstone River system under the authority of said state.
- B. Any individual, corporation, partnership, association, district, administrative department, bureau, political subdivision, agency, person, permittee, or appropriator authorized by or under the laws of a signatory state, and all others using, claiming, or in any manner asserting any right to the use of the waters of the Yellowstone River system under the authority of said state, shall be subject to the terms of this compact. Where the singular is used in this article, it shall be construed to include the plural.

ARTICLE II.

- A. The state of Montana, the state of North Dakota, and the state of Wyoming are hereinafter designated as "Montana", "North Dakota", and "Wyoming", respectively.
- B. The terms "commission" and "Yellowstone River compact commission" mean the agency created as provided herein for the administration of this compact.
- C. The term "Yellowstone River basin" means areas in Wyoming, Montana, and North Dakota drained by the Yellowstone River and its tributaries, and includes the area in Montana known as Lake Basin, but excludes those lands lying within Yellowstone National Park.
- D. The term "Yellowstone River system" means the Yellowstone River and all of its tributaries, including springs and swamps, from their sources to the mouth of the Yellowstone River near Buford, North Dakota, except those portions thereof which are within or contribute to the flow of streams within the Yellowstone National Park.
- E. The term "tributary" means any stream which in a natural state contributes to the flow of the Yellowstone River, including interstate tributaries and tributaries thereof, but excluding those which are within or contribute to the flow of streams within the Yellowstone National Park.
- F. The term "interstate tributaries" means the Clarks Fork, Yellowstone River; the Bighorn River (except Little Bighorn River); the Tongue River; and the Powder River, whose confluences with the Yellowstone River are respectively at or near the city (or town) of Laurel, Big Horn, Miles City, and Terry, all in the state of Montana.
- G. The terms "divert" and "diversion" mean the taking or removing of water from the Yellowstone River or any tributary thereof when the water so taken or removed is not returned directly into the channel of the Yellowstone River or of the tributary from which it is taken.
- H. The term "beneficial use" is herein defined to be that use by which the water supply of a drainage basin is depleted when usefully employed by the activities of man.
- I. The term "domestic use" shall mean the use of water by an individual, or by a family unit or household for drinking, cooking, laundering, sanitation, and other personal comforts and necessities; and for the irrigation of a family garden or orchard not exceeding one-half acre in area.
- J. The term "stock water use" shall mean the use of water for livestock and poultry.

ARTICLE III.

- A. It is considered that no commission or administrative body is necessary to administer this compact or divide the waters of the Yellowstone River basin as between the states of Montana and North Dakota. The provisions of this compact, as between the states of Wyoming and Montana, shall be administered by a commission composed of one representative from the state of Wyoming and one representative from the state of Montana, to be selected by the governors of said states as such states may choose, and one representative selected by the director of the United States geological survey or whatever federal agency may succeed to the functions and duties of that agency, to be appointed by the director at the request of the states to sit with the commission and who shall, when present, act as chairman of the commission without vote, except as herein provided.
- B. The salaries and necessary expenses of each state representative shall be paid by the respective state; all other expenses incident to the administration of this compact not borne by the United States shall be allocated to and borne one-half by the state of Wyoming and one-half by the state of Montana.

- C. In addition to other powers and duties herein conferred upon the commission and the members thereof, the jurisdiction of the commission shall include the collection, correlation, and presentation of factual data, the maintenance of records having a bearing upon the administration of this compact, and recommendations to such states upon matters connected with the administration of this compact, and the commission may employ such services and make such expenditures as reasonable and necessary within the limit of funds provided for that purpose by the respective states, and shall compile a report for each year ending September thirtieth and transmit it to the governors of the signatory states on or before December thirty-first of each year.
- D. The secretary of the army; the secretary of the interior; the secretary of agriculture; the chairman, federal power commission; the secretary of commerce, or comparable officers of whatever federal agencies may succeed to the functions and duties of these agencies, and such other federal officers and officers of appropriate agencies of the signatory states having services or data useful or necessary to the compact commission, shall cooperate, ex officio, with the commission in the execution of its duty in the collection, correlation, and publication of records and data necessary for the proper administration of the compact; and these officers may perform such other services related to the compact as may be mutually agreed upon with the commission.
- E. The commission shall have power to formulate rules and regulations and to perform any act which they may find necessary to carry out the provisions of this compact, and to amend such rules and regulations. All such rules and regulations shall be filed in the office of the state engineer of each of the signatory states for public inspection.
- F. In case of the failure of the representatives of Wyoming and Montana to unanimously agree on any matter necessary to the proper administration of this compact, then the member selected by the director of the United States geological survey shall have the right to vote upon the matters in disagreement and such points of disagreement shall then be decided by a majority vote of the representatives of the states of Wyoming and Montana and said member selected by the director of the United States geological survey, each being entitled to one vote.
- G. The commission herein authorized shall have power to sue and be sued in its official capacity in any federal court of the signatory states, and may adopt and use an official seal which shall be judicially noticed.

ARTICLE IV. The commission shall itself, or in conjunction with other responsible agencies, cause to be established, maintained, and operated such suitable water gaging and evaporation stations as it finds necessary in connection with its duties.

ARTICLE V.

- A. Appropriative rights to the beneficial uses of the water of the Yellowstone River system existing in each signatory state as of January 1, 1950, shall continue to be enjoyed in accordance with the laws governing the acquisition and use of water under the doctrine of appropriation.
- B. Of the unused and unappropriated waters of the interstate tributaries of the Yellowstone River as of January 1, 1950, there is allocated to each signatory state such quantity of that water as shall be necessary to provide supplemental water supplies for the rights described in paragraph A of this article V, such supplemental rights to be acquired and enjoyed in accordance with the laws governing the acquisition and use of water under the doctrine of appropriation, and the remainder of the unused and unappropriated water is allocated to each state for storage or direct diversions for beneficial use on new lands or for other purposes as follows:

1. Clarks Fork, Yellowstone River
 - a. To Wyoming 60%
 - To Montana 40%
 - b. The point of measurement shall be below the last diversion from Clarks Fork above Rock Creek.
 2. Bighorn River (Exclusive of Little Bighorn River)
 - a. To Wyoming 80%
 - To Montana 20%
 - b. The point of measurement shall be below the last diversion from the Bighorn River above its junction with the Yellowstone River, and the inflow of the Little Bighorn River shall be excluded from the quantity of water subject to allocation.
 3. Tongue River
 - a. To Wyoming 40%
 - To Montana 60%
 - b. The point of measurement shall be below the last diversion from the Tongue River above its junction with the Yellowstone River.
 4. Powder River (Including the Little Powder River)
 - a. To Wyoming 42%
 - To Montana 58%
 - b. The point of measurement shall be below the last diversion from the Powder River above its junction with the Yellowstone River.
- C. The quantity of water subject to the percentage allocations, in paragraph B 1, 2, 3, and 4 of this article V, shall be determined on an annual water year basis measured from October first of any year through September thirtieth of the succeeding year. The quantity to which the percentage factors shall be applied through a given date in any water year shall be, in acre-feet, equal to the algebraic sum of:
1. The total diversions, in acre-feet, above the point of measurement, for irrigation, municipal, and industrial uses in Wyoming and Montana developed after January 1, 1950, during the period from October first to that given date;
 2. The net change in storage, in acre-feet, in all reservoirs in Wyoming and Montana above the point of measurement completed subsequent to January 1, 1950, during the period from October first to that given date;
 3. The net change in storage, in acre-feet, in existing reservoirs in Wyoming and Montana above the point of measurement, which is used for irrigation, municipal, and industrial purposes developed after January 1, 1950, during the period October first to that given date;
 4. The quantity of water, in acre-feet, that passed the point of measurement in the stream during the period from October first to that given date.

- D. All existing rights to the beneficial use of waters of the Yellowstone River in the states of Montana and North Dakota, below Intake, Montana, valid under the laws of these states as of January 1, 1950, are hereby recognized and shall be and remain unimpaired by this compact. During the period May first to September thirtieth, inclusive, of each year, lands within Montana and North Dakota shall be entitled to the beneficial use of the flow of waters of the Yellowstone River below Intake, Montana, on a proportionate basis of acreage irrigated. Waters of tributary streams, having their origin in either Montana or North Dakota, situated entirely in said respective states and flowing into the Yellowstone River below Intake, Montana, are allotted to the respective states in which situated.
- E. There are hereby excluded from the provisions of this compact:
1. Existing and future domestic and stock water uses of water:

 Provided, that the capacity of any reservoir for stock water so excluded shall not exceed 20 acre-feet;
 2. Devices and facilities for the control and regulation of surface waters.
- F. From time to time the commission shall reexamine the allocations herein made and upon unanimous agreement may recommend modifications therein as are fair, just and equitable, giving consideration among other factors to:
- Priorities of water rights;
- Acreage irrigated;
- Acreage irrigable under existing works; and
- Potentially irrigable lands.

ARTICLE VI. Nothing contained in this compact shall be so construed or interpreted as to affect adversely any rights to the use of the waters of Yellowstone River and its tributaries owned by or for Indians, Indian tribes, and their reservations.

ARTICLE VII.

- A. A lower signatory state shall have the right, by compliance with the laws of an upper signatory state, except as to legislative consent, to file application for and receive permits to appropriate and use any waters in the Yellowstone River system not specifically apportioned to or appropriated by such upper state as provided in article V; and to construct or participate in the construction and use of any dam, storage reservoir, or diversion works in such upper state for the purpose of conserving and regulating water that may be apportioned to or appropriated by the lower state: Provided, that such right is subject to the rights of the upper state to control, regulate, and use the water apportioned to and appropriated by it; and provided further, that should an upper state elect, it may share in the use of any such facilities constructed by a lower state to the extent of its reasonable needs upon assuming or guaranteeing payment of its proportionate share of the cost of the construction, operation, and maintenance. This provision shall apply with equal force and effect to an upper state in the circumstances of the necessity of the acquisition of rights by an upper state in a lower state.
- B. Each claim hereafter initiated for an appropriation of water in one signatory state for use in another signatory state shall be filed in the office of the state engineer of the signatory state in which the water is to be diverted, and a duplicate copy of the application or notice shall be filed in the office of the state engineer of the signatory state in which the water is to be used.

- C. Appropriations may hereafter be adjudicated in the state in which the water is diverted, and where a portion or all of the lands irrigated are in another signatory state, such adjudications shall be confirmed in that state by the proper authority. Each adjudication is to conform with the laws of the state where the water is diverted and shall be recorded in the county and state where the water is used.
- D. The use of water allocated under article V of this compact for projects constructed after the date of this compact by the United States of America or any of its agencies or instrumentalities, shall be charged as a use by the state in which the use is made: Provided, that such use incident to the diversion, impounding, or conveyance of water in one state for use in another shall be charged to such latter state.

ARTICLE VIII. A lower signatory state shall have the right to acquire in an upper state by purchase, or through exercise of the power of eminent domain, such lands, easements, and rights of way for the construction, operation, and maintenance of pumping plants, storage reservoirs, canals, conduits, and appurtenant works as may be required for the enjoyment of the privileges granted herein to such lower state. This provision shall apply with equal force and effect to an upper state in the circumstance of the necessity of the acquisition of rights by an upper state in a lower state.

ARTICLE IX. Should any facilities be constructed by a lower signatory state in an upper signatory state under the provisions of article VII, the construction, operation, repairs, and replacements of such facilities shall be subject to the laws of the upper state. This provision shall apply with equal force and effect to an upper state in the circumstance of the necessity of the acquisition of rights by an upper state in a lower state.

ARTICLE X. No water shall be diverted from the Yellowstone River basin without the unanimous consent of all the signatory states. In the event water from another river basin shall be imported into the Yellowstone River basin or transferred from one tributary basin to another by the United States of America, Montana, North Dakota, or Wyoming, or any of them jointly, the state having the right to the use of such water shall be given proper credit therefor in determining its share of the water apportioned in accordance with article V herein.

ARTICLE XI. The provisions of this compact shall remain in full force and effect until amended in the same manner as it is required to be ratified to become operative as provided in article XV.

ARTICLE XII. This compact may be terminated at any time by unanimous consent of the signatory states, and upon such termination all rights then established hereunder shall continue unimpaired.

ARTICLE XIII. Nothing in this compact shall be construed to limit or prevent any state from instituting or maintaining any action or proceeding, legal or equitable, in any federal court or the United States Supreme Court, for the protection of any right under this compact or the enforcement of any of its provisions.

ARTICLE XIV. The physical and other conditions characteristic of the Yellowstone River and peculiar to the territory drained and served thereby and to the development thereof, have actuated the signatory states in the consummation of this compact, and none of them, nor the United States of America by its consent and approval, concedes thereby the establishment of any general principle or precedent with respect to other interstate streams.

ARTICLE XV. This compact shall become operative when approved by the legislature of each of the signatory states and consented to and approved by the Congress of the United States.

ARTICLE XVI. Nothing in this compact shall be deemed:

- (a) To impair or affect the sovereignty or jurisdiction of the United States of America in or over the area of waters affected by such compact, any rights or powers of the United States of America, its agencies, or instrumentalities, in and to the use of the waters of the Yellowstone River basin nor its capacity to acquire rights in and to the use of said waters;
- (b) To subject any property of the United States of America, its agencies, or instrumentalities to taxation by any state or subdivision thereof, nor to create an obligation on the part of the United States of America, its agencies, or instrumentalities, by reason of the acquisition, construction, or operation of any property or works of whatsoever kind, to make any payments to any state or political subdivision thereof, state agency, municipality, or entity whatsoever in reimbursement for the loss of taxes; and
- (c) To subject any property of the United States of America, its agencies, or instrumentalities, to the laws of any state to an extent other than the extent to which these laws would apply without regard to the compact.

ARTICLE XVII. Should a court of competent jurisdiction hold any part of this compact to be contrary to the constitution of any signatory state or of the United States of America, all other severable provisions of this compact shall continue in full force and effect.

ARTICLE XVIII. No sentence, phrase, or clause in this compact or in any provision thereof, shall be construed or interpreted to divest any signatory state or any of the agencies or officers of such states of the jurisdiction of the water of each state as apportioned in this compact.

In Witness Whereof the commissioners have signed this compact in quadruplicate original, one of which shall be filed in the archives of the department of state of the United States of America and shall be deemed the authoritative original, and of which a duly certified copy shall be forwarded to the governor of each signatory state.

Done at the city of Billings in the state of Montana, this 8th day of December, in the year of our Lord, one thousand nine hundred and fifty.

Commissioners for the state of Montana:

Fred E. Buck, A. W. Bradshaw, H. W. Bunston, John Herzog, John M. Jarussi, Ashton Jones, Chris Josephson, A. Wallace Kingsbury, P. F. Leonard, Walter M. McLaughlin, Dave M. Manning, Joseph Muggli, Chester E. Onstad, Ed F. Parriott, R. R. Renne, Keith W. Trout.

Commissioners for the state of North Dakota:

L. A. Acker, Einar H. Dahl, J. J. Walsh.

Commissioners for the state of Wyoming:

L. C. Bishop, Earl T. Bower, J. Harold Cash, Ben F. Cochrane, Ernest J. Goppert, Richard L. Greene, E. C. Gwillim, E. J. Johnson, Lee E. Keith, N. V. Kurtz, Harry L. Littlefield, R. E. McNally, Will G. Metz, Mark M. Partridge, Alonzo R. Shreve, Charles M. Smith, Leonard F. Thornton, M. B. Walker.

"I have participated in the negotiation of this compact and intend to report favorably thereon to the Congress of the United States.

R. J. Newell,

Representative of the United States of America"

61-23-02. Compact not binding until approved by other states and the Congress of the United States - Governor to give notice of ratification. Said compact shall not be binding or obligatory upon any of the high contracting parties thereto unless and until the same shall have been approved by the legislature of each of the said states and by the Congress of the United States. The governor of North Dakota shall give notice of the ratification and approval of said compact by the thirty-second legislative assembly of the state of North Dakota to the governors of each of the remaining signatory states and to the president of the United States.

CHAPTER 61-24 GARRISON DIVERSION CONSERVANCY DISTRICT

<u>Section</u>	<u>Page</u>
61-24-01 Development and utilization of land and water resources declared a public purpose - Declaration of intention - Interpretation	61-24: 1
61-24-02 Garrison Diversion Conservancy District created	61-24: 1
61-24-03 Election of directors of the Garrison Diversion Conservancy District	61-24: 2
61-24-03.1 Filling vacancy of director on general election ballot	61-24: 2
61-24-04 Compensation of directors	61-24: 2
61-24-05 Term of office of directors - Oath of office - Bonds	61-24: 3
61-24-06 Meetings of the board - Quorum - Board to adopt rules, regulations, and bylaws	61-24: 3
61-24-07 Attorney general shall act as legal adviser - Chief engineer of state water commission to assist board - Employment of counsel and engineers	61-24: 3
61-24-08 Powers and duties of the district board of directors	61-24: 3
61-24-09 District budget - Determination of amount to be levied – Adoption of levy - Limitation	61-24: 5
61-24-10 Certified copies of levy and budget sent to county auditors	61-24: 5
61-24-11 County auditors to extend tax levy	61-24: 5
61-24-12 County treasurers to collect and remit district taxes	61-24: 5
61-24-13 District may enter into contract for the construction, operation, and maintenance of works	61-24: 5
61-24-14 When contract is approved	61-24: 6
61-24-15 Proceedings to confirm contract	61-24: 6
61-24-16 County may be excluded from conservancy district if not benefited	61-24: 6
61-24-17 Appeal from orders of district board	61-24: 7
61-24-18 State and political subdivisions contracting with the bureau of reclamation - Roads	61-24: 7
61-24-19 Easement granted for ditches, canals, tramways, and transmission lines on any public lands	61-24: 7
61-24-20 Director of agricultural experiment station to determine best management practices - Reports to the Garrison Diversion Conservancy District - Monitoring of ground water quality	61-24: 7
61-24-21 District to allocate water in accordance with best management practices	61-24: 8

CHAPTER 61-24

GARRISON DIVERSION CONSERVANCY DISTRICT

61-24-01. Development and utilization of land and water resources declared a public purpose - Declaration of intention - Interpretation. It is hereby declared that more effective development and utilization of the land and water resources of this state, protection and preservation of the benefits therefrom, opportunity for greater economic security, protection of health, property and enterprise, and the promotion of the prosperity and general welfare of all of the people of North Dakota involve, necessitate, and require the exercise of the sovereign powers of the state and concern a public purpose, the accomplishment of which, among other things, demands, and it is hereby declared necessary, that the Garrison diversion unit of the Missouri River basin project as authorized by Act of Congress approved December 22, 1944 [58 Stat. 887], and acts amendatory thereof and supplementary thereto, be established and constructed:

1. To provide for the future economic welfare and prosperity of the people of this state, and particularly of the people residing in the area embraced within the boundaries of the conservancy district created by this chapter.
2. To provide for the irrigation of lands within the sections of such district periodically afflicted with drought, and to stabilize the production of crops thereon.
3. To replenish and restore the depleted waters of lakes, the Red, Sheyenne, James, and other rivers, and streams in the district, and to stabilize the flow of these streams.
4. To replenish the waters, and to restore the level of Devils Lake, Stump Lake, Lake Williams, and Turtle Lake.
5. To make available within the district, waters diverted from the Missouri River for irrigation, domestic, municipal, and industrial needs, and for hydroelectric power, recreation, fish, wildlife, and other beneficial and public uses.

The provisions hereof shall not be construed to, in any manner, abrogate or limit the rights, powers, duties, and functions of the state water commission, but shall be held to be supplementary thereto and an aid thereof. Nor shall this chapter be construed as limiting or in any way affecting the laws of this state relating to the organization and maintenance of irrigation districts, flood irrigation districts, water resource districts, drainage districts, or watershed protection districts, nor as precluding the establishment of any such district wholly or in part within the boundaries of the district created by this chapter.

61-24-02. Garrison Diversion Conservancy District created. The "Garrison Diversion Conservancy District", hereinafter referred to as the "district" consists of that part of the state that is included within the boundaries of the following counties: Barnes, Benson, Bottineau, Burleigh, Cass, Dickey, Eddy, Foster, Grand Forks, Griggs, LaMoure, McHenry, McLean, Nelson, Pierce, Ramsey, Ransom, Renville, Richland, Sargent, Sheridan, Steele, Stutsman, Traill, Ward, and Wells.

The district is a governmental agency, body politic and corporate with the authority to exercise the powers specified in this chapter, or which may be reasonably implied.

Any county may join the district upon application of its board of county commissioners and the approval of the application by the board of directors of the district. Such county is authorized to levy taxes as may be necessary to carry out its part of the agreement for becoming a part of the district, which levy is in addition to the amount that may otherwise be legally levied for county purposes.

61-24-03. Election of directors of the Garrison Diversion Conservancy District. A director of the Garrison Diversion Conservancy District must be nominated and elected in each county in the district. Any person who is a resident and qualified elector of the county who aspires to the office of director of the Garrison Diversion Conservancy District shall, not more than seventy days or less than sixty days and before four p.m. of the sixtieth day before any primary election preceding a general election at which a director of the district is to be elected, present to the county auditor a petition giving that person's name, post-office address, the title of the office "Director of the Garrison Diversion Conservancy District", and containing the signatures of not less than fifty nor more than three hundred qualified electors of the county to which each signer has added the signer's residence with street number, if any, and the date of signing.

The petition must be accompanied by an affidavit substantially as follows:

STATE OF NORTH DAKOTA,

County of _____

I, _____, being sworn, say that I reside in the county of _____ and State of North Dakota; that I am a qualified elector therein; that I am a candidate for nomination to the office of director of the Garrison Diversion Conservancy District to be chosen at the primary election to be held on _____, _____, and I request that my name be printed upon the no-party primary election ballot as provided by law, as a candidate for the office.

Subscribed and sworn to before me on _____, _____.

Notary Public

Upon receipt of the petition the county auditor shall without fee place the name of the aspirant on the no-party primary election ballot as a candidate for the aforesaid office of director. The two candidates receiving the highest number of votes if more than two are running are nominated.

The names of the candidates so nominated at the primary election must be placed on the no-party ballot at the ensuing general election and the candidate receiving the highest number of votes is elected.

At the primary and general elections votes must be canvassed, returned certified, and certificates of nomination and election issued in the manner provided by law for the nomination and election of county officers.

61-24-03.1. Filling vacancy of director on general election ballot. Whenever a vacancy exists on a general election no-party ballot for any directorship of the Garrison Diversion Conservancy District, the vacancy may be filled by filing with the county auditor at least sixty days prior to the general election a petition substantially in the form provided in section 61-24-03, stating that the petitioner desires to become a candidate for election to the office of director. This petition must contain the signatures of not less than fifty qualified electors of the county, unless there were at least fifty write-in or sticker votes for the petitioner cast in the no-party primary election for the office.

A vacancy in the no-party ballot is deemed to exist when no candidate is nominated at the primary election or when a candidate nominated at the primary dies, resigns, or otherwise becomes disqualified to have that person's name printed on the ballot at the general election.

61-24-04. Compensation of directors. Each member of the board of directors of the district is entitled to receive as compensation from the district an amount determined by the board of directors not to exceed the amount provided for members of the legislative council under section 54-35-10 per day and must be reimbursed for the member's expenses in the amounts provided in sections 44-08-04 and 54-06-09 while attending meetings of the board or otherwise engaged in the official business of the district.

61-24-05. Term of office of directors - Oath of office - Bonds. Each member of the board of directors of the district shall hold office for a term of three years, and until the successor in office has been appointed and qualified, provided, that one-third of the board first appointed shall hold office for a term of three years, one-third for a term of two years, and the other directors shall hold office for a term of one year, from the first day of July next following the date of their appointment. Before assuming the duties of the office, each director shall take and subscribe the oath of office prescribed by law for civil officers. The district treasurer shall be bonded in such amount as the board may prescribe.

A member of the board of directors of the district elected in 1960 and thereafter shall hold office for a term of four years and until a successor has been duly elected and qualifies, but one-half of the directors elected at the general election in 1960 shall hold office for a term of two years, and one-half shall hold office for four years. Terms of office of directors elected at the first election shall be determined by lot. Directors elected after 1960 shall hold office for a term of four years. If the office of any director shall become vacant by reason of the failure of any director elected at any election to qualify or for any other reason, the successor shall be appointed to fill the vacancy by the board of county commissioners of the county in which the vacancy occurs. A director appointed to fill a vacancy shall hold office for the unexpired term of the director whose office has become vacant. A director shall, however, hold office until a successor has been elected and qualifies.

Members of the board of directors elected in 1960 shall assume office on the first Monday in January 1961 and shall replace all members of the board previously appointed. They shall meet at a time and place designated by the secretary of the replaced board of directors, and if that secretary is unable to act, by the secretary of the state water commission, and shall organize in the same manner as the first board of directors was organized. The secretary of the replaced board and any other person employed by that board shall continue in their positions until the new board shall otherwise provide.

61-24-06. Meetings of the board - Quorum - Board to adopt rules, regulations, and bylaws. The board of directors of the district shall adopt such rules and regulations and bylaws for the conduct of the business affairs of the district as they may deem necessary, including the time and place of regular meetings of the board. They shall elect from their number a chairman and vice chairman. They shall also elect a secretary and a treasurer, which offices may be held by the same person, and either or both offices may be held by someone not a member of the board. Special meetings may be called by the secretary on order of the chairman of the board or upon the written request of the majority of the qualified members of the board. Notice of a special meeting shall be mailed to each member of the board at least six days before such meetings, provided, that a special meeting may be held at any time when all members of the board are present or consent thereto in writing. A majority of the members of the board of directors shall constitute a quorum for the transaction of business, but any number may adjourn the meeting for want of a quorum.

61-24-07. Attorney general shall act as legal adviser - Chief engineer of state water commission to assist board - Employment of counsel and engineers. The attorney general shall, as far as the attorney general's duties permit, act as the legal adviser of the board. The chief engineer of the state water commission shall furnish such engineering services and assistance as the duties of the chief engineer's office permit. When the district has funds available, the board of directors may employ other counsel to advise and represent it in its proceedings and affairs, and may employ other engineers and engineering services in connection with its work and the affairs of the district.

61-24-08. Powers and duties of the district board of directors. The board of directors of the Garrison Diversion Conservancy District shall have the power:

1. To sue and be sued in the name of the district.
2. To exercise the power of eminent domain in the manner provided by title 32 for the purpose of acquiring and securing any right, title, interest, estate, or easement

necessary to carry out the duties imposed by this chapter, and particularly to acquire the necessary rights in land for the construction of dams, reservoirs, canals, hydroplants, irrigation systems, and any other device for the conservation, storage and use of water, and to secure the right of access to such works and the right of the public access to the waters impounding thereby or emanating therefrom.

3. To accept funds, property, and services or other assistance, financial or otherwise, from federal, state, and other public or private sources for the purpose of aiding and promoting the construction, maintenance, and operation of the Garrison diversion unit, or any part thereof.
4. To cooperate and contract with the state, its agencies, or its political subdivisions, or any agency of the United States, in research and investigation or other activities promoting the establishment, construction, development, or operation of the Garrison diversion unit, or any part thereof.
5. To furnish assurances of cooperation and as principal and guarantor or either to enter into a contract, or contracts, with the United States of America, or any department or agency thereof, and with public corporations of North Dakota for the performance of obligations entered into with the United States for the construction, operation, or maintenance of works of the Garrison diversion unit of the Missouri River basin project as defined by Act of Congress, approved December 22, 1944 [58 Stat. 887], and acts amendatory thereof or supplementary thereto.
6. To construct separately or in cooperation with agencies of the United States, or the state of North Dakota, its agencies or political subdivisions, and to equip, maintain, and operate an office and principal place of business for the district, or other buildings or facilities to carry out activities authorized by this chapter.
7. To appoint and fix the compensation of such employees as the board shall deem necessary to conduct the business and affairs of the district.
8. To appoint from their number an executive committee and vest the same with such powers and duties as the board may from time to time delegate thereto, in order to facilitate the duties and work of the board in connection with the business affairs involved in the development, construction, operation, and maintenance of the Garrison diversion unit, or any part thereof.
9. In 1961 and each year thereafter to levy a tax of not to exceed one mill annually on each dollar of taxable valuation in the district for the payment of the expenses of the district, including, but not limited to, per diem, mileage and other expenses of directors, technical, administrative, clerical, operating and other expenses of the district office, and for the cumulation of a continuing fund through such levy for the performance of obligations entered into with the United States of America in connection with the construction, operation, and maintenance of works of the said Garrison diversion unit of the Missouri River basin project. All moneys collected pursuant to such levy shall be deposited in the Bank of North Dakota to the credit of the district and shall be disbursed only as herein provided. The board may invest any funds on hand, not needed for immediate disbursement or which are held in reserve for future payments, in bonds of the United States, bonds and mortgages or other securities the payment of which is guaranteed by the United States or an instrumentality or agency thereof, or bonds or certificates of indebtedness of the state of North Dakota or any of its political subdivisions. The amount which may be levied in any one year for operating the district prior to authorization by Congress of the Garrison diversion project shall not exceed ten percent of the maximum permissible.
10. To enter into a contract or contracts for a supply of water from the United States and to sell, lease, and otherwise contract to furnish any such water for beneficial use to

irrigation districts, persons, other public and private corporations, or limited liability companies within the district.

11. To operate and maintain or to contract for the operation and maintenance of water supply and irrigation works serving lands and uses within the district, and in connection therewith, to maintain a reserve fund to meet major unforeseen costs of operation and maintenance.
12. To accept, on behalf of the district, appointment of the district as fiscal agent of the United States and authorization to make collections of money for and on behalf of the United States in connection with the Garrison diversion unit.
13. To use navigable lakes and streams within the conservancy district for holding, impounding, and conveying water of the Garrison diversion unit.
14. To provide administrative aid and assistance in the relocation of buildings and the replacement of land to persons affected by the Garrison diversion development in an effort to make certain that such persons are treated fairly and that they do not suffer financial hardship due to the development of the Garrison diversion unit.
15. To sell or exchange any and all real property purchased or acquired by the district. All moneys received pursuant to any such sale or exchange shall be deposited in the Bank of North Dakota to the credit of the district and may be disbursed only for the payment of expenses of the district as specified in subsection 9.

61-24-09. District budget - Determination of amount to be levied - Adoption of levy - Limitation. In July of each year the board of directors shall estimate and itemize all the expenses and obligations of the district, including, but not limited to, expenses of directors, expenses of operating the office, debt service and retirement, and obligations and liabilities to the United States for which provision must be made. The board of directors may include in such budget funds deemed necessary to create reserve funds to meet future payments under district contracts. Upon the completion and adoption of such budget, the board of directors shall make a tax levy in an amount sufficient to meet such budget. Such levy shall be in the form of a resolution, adopted by a majority vote of the members of the board of directors of the district. Such resolution shall levy in mills, but not exceeding one mill, sufficient to meet all the expenses, obligations, and liabilities of the district as provided in the budget.

61-24-10. Certified copies of levy and budget sent to county auditors. Immediately after completion of the budget and the adoption of the annual tax levy by the board of directors of the district, but not later than October first, the secretary of the district shall send one certified copy of the levy as adopted and one certified copy of the budget to the county auditor of each county in the district.

61-24-11. County auditors to extend tax levy. The county auditor of each county in the district shall extend the levy upon the tax list of the county for the current year against each description of real property and all personal property within the county in the same manner and with the same effect as other taxes are extended.

61-24-12. County treasurers to collect and remit district taxes. The treasurer of each county in the district shall collect all district taxes, together with interest and penalty thereon, if any, in the same manner as the general taxes are collected, and shall pay over to the treasurer of the Garrison Diversion Conservancy District, on the first day of each month, on demand, all taxes so collected during the preceding month, with interest and penalties collected thereon, and forthwith shall notify the secretary of the district of such payment.

61-24-13. District may enter into contract for the construction, operation, and maintenance of works. When the board of directors of the Garrison Diversion Conservancy District is notified by the United States, or by any department or agency thereof, that it is necessary for the district to enter into a contract as principal and guarantor or either, for the

repayment of any part of the cost incurred, or to be incurred in the construction, operation, and maintenance of works of the Garrison diversion unit of the Missouri River basin project, the board shall give notice of hearing on such proposed contract as herein provided. Hearings on such contract shall be conducted in at least three places in the district by a contract hearing committee composed of at least three director members of the board as designated by the board. Notice of the time and place of such hearings shall be published at least ten days before such hearing in not less than three newspapers of general circulation in the district. Anyone interested in, or affected by such contract if entered into, may appear at any such hearing and show cause, if any, why such proposed contract should or should not be approved. The contract hearing committee shall submit its report, including support and objections to the contract, and its recommendations to the board for final action. After considering the terms and conditions of such proposed contract and the report and recommendations of the contract hearing committee, the board shall adopt a resolution approving or disapproving such contract. If disapproved, the board may enter into further negotiations with the United States concerning terms for a new or amended contract. At least thirty days before any hearing is held on such contract for construction of facilities or works, plans therefor shall be filed with the secretary of the district and shall be open to public inspection.

61-24-14. When contract is approved. After any such contract shall have been duly executed, as herein provided, the board of directors shall, in accordance with the provisions of such contract, adopt a resolution that a tax be assessed and levied upon all the taxable property in the district. Such tax shall be within the limitation herein provided and shall be levied annually on each dollar of the taxable valuation in the district until the contract obligations have been paid, or a sufficient fund has been accumulated to pay the same. The resolution shall state the purpose of such levy and the amount thereof. A certified copy thereof shall be mailed to the county auditor of each county in the district. Upon the receipt of such resolution or as soon thereafter as county levies are made, such county auditor shall spread the levy specified in such resolution for the current year and annually thereafter as required by such resolution.

61-24-15. Proceedings to confirm contract. The board of directors of the Garrison Diversion Conservancy District, after entering into a contract with the United States government or with any public corporation of the state of North Dakota, may commence a special proceeding in and by which the proceedings of the board and the making of such contract, or contracts, shall be judicially examined, approved, and confirmed, or disapproved and disaffirmed. Such proceeding shall comply as nearly as possible with the procedure required in the case of irrigation districts under the laws of North Dakota.

61-24-16. County may be excluded from conservancy district if not benefited.

1. Any county in the conservancy district not benefited or not to be benefited, in whole or in part, by the establishment of the Garrison diversion unit of the Missouri River basin project as authorized by Act of Congress, approved December 22, 1944 [58 Stat. 887], and acts amendatory thereof or supplementary thereto, may be excluded from the district as provided herein. The board of county commissioners of any such county may by resolution direct the county auditor and the chairman of the board to file with the board of directors of the conservancy district a petition, for and on behalf of the county, requesting the board of directors of the district to exclude such county therefrom. A certified copy of the resolution of the county board shall accompany and be filed with such petition. The petition and resolution shall state specific reasons why such county will not be benefited by the establishment and development of the Garrison diversion unit.
2. Within sixty days from the date of filing said resolution and petition for exclusion from the district, the district board shall meet to consider such petition. It may grant such petition or it may fix a time and place for a hearing thereon. If a hearing be set, the secretary of the board shall cause notice of the filing of such petition for exclusion, and of the time and place for a hearing, to be published once each week for two consecutive weeks in a newspaper of general circulation printed in the district. The hearing mentioned in such notice shall be held not less than ten nor more than

twenty days after the last publication of such notice. The notice shall state that any person, corporation, limited liability company, municipality, and county in the district may appear or be represented at the hearing and show cause why the petition should or should not be granted. The board shall hear the petition at the time and place mentioned in the notice.

3. If after the hearing on the petition the district board of directors shall determine that the county requesting to be excluded from the district will not be benefited the district board shall by resolution grant the petition and shall direct the chairman and secretary to execute the order of the board excluding such county from the conservancy district. If, however, the district board shall decide that such county will be benefited it shall deny the petition and direct the chairman and secretary to execute its order refusing to exclude such county from the district. A county excluded from the conservancy district shall not be liable for any obligations thereof incurred after exclusion but shall be liable for and shall pay to the district taxes levied before exclusion.
4. If any contract shall have been made with the United States or any agency thereof before such petition is filed, such petition shall not be granted unless consented thereto by the appropriate agency of the United States and if such agency gives its consent upon condition, such conditions shall be included in the order of exclusion and the county may be required to and in that event such county shall continue to pay any tax levies required to meet the obligations of any such contract.

61-24-17. Appeal from orders of district board. An appeal from an order of the board of directors of the conservancy district denying a petition for exclusion may be taken to the district court of the petitioning county. The appeal must be taken in accordance with the procedure provided in section 28-34-01. The appeal must be docketed as any cause pending in district court is docketed and thereupon the court shall hear and determine the cause without a jury. An appeal to the supreme court may be taken by the petitioning county or by the conservancy district, from any judgment entered in district court, and from any order of the court if an appeal would lie from such order if entered by the court in a civil action.

61-24-18. State and political subdivisions contracting with the bureau of reclamation - Roads. In connection with the construction and development of the Garrison diversion unit of the Missouri River basin project, the highway authorities of the state, or any county or organized township or municipality, are authorized to enter into agreements with each other or with the federal government, respecting the financing, planning, establishment, relocation, improvement, maintenance, use, regulation, vacation, or abandonment of public ways in their respective jurisdictions. Where any such contracts require the relocation, vacation, or abandonment of particular public ways, the contracting state agency, county, organized township, or municipality shall be vested with and authorized to exercise the powers of the state in the relocation, vacation, or abandonment of existing public ways.

61-24-19. Easement granted for ditches, canals, tramways, and transmission lines on any public lands. In connection with the construction and development of the Garrison diversion unit of the Missouri River basin project, there is granted over all the lands belonging to the state, including lands owned or acquired for highway right-of-way purposes, a right of way for ditches or canals and for tunnels, tramways, and telephone and electric transmission lines constructed as part of the Garrison diversion unit; provided, however, that the director of the department of transportation, the board of county commissioners, or the board of township supervisors must approve the plans of the bureau of reclamation with respect to the use of any and all right of way of roads under their respective control prior to such grant becoming effective.

61-24-20. Director of agricultural experiment station to determine best management practices - Reports to the Garrison Diversion Conservancy District - Monitoring of ground water quality.

1. The director of the agricultural experiment station, with respect to all land to be irrigated by water from the Garrison diversion unit of the Pick-Sloan Missouri River basin project, shall promulgate rules and regulations for the determination of best management practices on the affected land. The rules and regulations may be amended from time to time. For the purposes of this section and section 61-24-21, "best management practices" means the application of water, fertilizers, pesticides, and herbicides in amounts that maximize crop production and economically efficient farming, while, at the same time, minimizing chemical or other pollution and degradation of ground or surface water supplies in areas irrigated with water from the Garrison diversion unit. Upon determining the best management practices for all land in question, the director of the agricultural experiment station shall file the information with the headquarters office of the district.
2. The district in cooperation with other state agencies shall monitor the ground and surface water quality in all areas irrigated with water from the Garrison diversion unit, to determine compliance with the regulations concerning best management practices for farming of that land. If violations of best management practices are discovered, the district shall determine the location of all irrigators causing the violation and shall reduce the amount of water which may be distributed to the violating irrigator consistent with best management practices.

61-24-21. District to allocate water in accordance with best management practices.

The district shall distribute water to irrigators purchasing water from the district in amounts that are consistent with the determinations of the director of the agricultural experiment station for best management practices in the farming of the applicable land.

CHAPTER 61-24.3 SOUTHWEST PIPELINE PROJECT

<u>Section</u>		<u>Page</u>
61-24.3-01	Legislative findings and intent	61-24.3: 1
61-24.3-02	Definitions	61-24.3: 1
61-24.3-03	Authorization of southwest pipeline project	61-24.3: 1
61-24.3-03.1	Preference for resident pipeline manufacturers and bidders for labor and services	61-24.3: 1
61-24.3-04	Water treatment	61-24.3: 2
61-24.3-05	Intake structure	61-24.3: 2
61-24.3-06	Secondary transmission mains	61-24.3: 2
61-24.3-06.1	Water distribution lines	61-24.3: 2
61-24.3-07	Capacity for industrial use	61-24.3: 2
61-24.3-08	Capacity for South Dakota users	61-24.3: 2
61-24.3-09	Pipeline construction standards	61-24.3: 3
61-24.3-10	Commission to construct, operate and maintain southwest pipeline project - Rules made by commission	61-24.3: 3
61-24.3-10.1	Deposits of income	61-24.3: 3
61-24.3-11	Commission to fix water rates for the southwest pipeline project	61-24.3: 3
61-24.3-12	Operation and maintenance - Commission to employ manager and employees	61-24.3: 3
61-24.3-13	Removal and discharge of appointees	61-24.3: 4
61-24.3-14	Operation and maintenance fund	61-24.3: 4
61-24.3-15	Revenues for operation and maintenance - Deposit - Use	61-24.3: 4
61-24.3-16	Reserve fund for replacement	61-24.3: 4
61-24.3-17	Revenues for replacement - Deposit - Use	61-24.3: 4
61-24.3-18	Water rates for capital costs - Deposit	61-24.3: 5
61-24.3-19	Validation of water service contracts	61-24.3: 5
61-24.3-20	Other pipelines - Commission approval required	61-24.3: 5
61-24.3-21	Authorization of facilities - Water service areas	61-24.3: 5

CHAPTER 61-24.3 SOUTHWEST PIPELINE PROJECT

61-24.3-01. Legislative findings and intent. The legislative assembly finds that adequate water supplies for municipal, domestic, livestock, rural, irrigation, industrial, and other uses are essential for the social stability and economic security of the people of the state of North Dakota. It is further found that the development and utilization of the water resources of this state are necessary for the protection of health, property, and enterprise, and for the promotion of prosperity and general welfare of the people of the state of North Dakota, and that such development and utilization of water resources in this state involves, necessitates, and requires the exercise of the sovereign powers of the state and concern a public purpose. Therefore, it is hereby declared necessary that the southwest pipeline project, as authorized and approved pursuant to this chapter, be established and constructed, to provide for the supplementation of the water resources of a portion of the area of North Dakota south and west of the Missouri River with water supplies from the Missouri River for multiple purposes, including domestic, rural, and municipal uses. In furtherance of this public purpose, the state water commission may provide for the issuance of bonds not to exceed twenty-five million dollars in accordance with chapter 61-02 to finance the cost of the project. The provisions of this chapter may not be construed to, in any manner, abrogate or limit the rights, powers, duties, or functions of the state water commission or the state engineer, but are supplementary thereto. Nor may this chapter be construed as limiting or in any way affecting the laws of this state relating to the organization or operation of irrigation districts, water resource districts, or other political subdivisions.

61-24.3-02. Definitions. In this chapter:

1. "Commission" means the state water commission.
2. "Water user entities" means those persons, municipalities, rural water cooperatives, corporations, limited liability companies, and other entities which have entered into and executed water service contracts with the commission for the purchase of water from the commission through the southwest pipeline project.

61-24.3-03. Authorization of southwest pipeline project. The preliminary designs for a water supply facility for supplementation of the water resources of a portion of the area of North Dakota south and west of the Missouri River for multiple uses, as set forth in the engineering preliminary design final report for the southwest pipeline project, state water commission project no. 1736, dated September 1982, are hereby confirmed and approved, under the designation of the southwest pipeline project, and the construction of the southwest pipeline project shall be initiated and completed by the state water commission substantially in accordance with plan B of the engineering preliminary design final report, state water commission project no. 1736, dated September 1982, except as otherwise specifically provided in this chapter. The commission shall have the authority to eliminate the construction of any primary or secondary transmission mains which are part of plan B of the engineering preliminary design final report if the water user entities to be served by the primary or secondary transmission mains do not execute water service contracts for the purchase of a sufficient quantity of water, as determined by the commission, to justify the construction of the primary or secondary transmission mains. Chapter 49-22 shall not apply to this chapter. The right of way is hereby given, dedicated, and set apart, to locate, construct, and maintain such works over and through any of the lands which are or may be the property of the state.

61-24.3-03.1. Preference for resident pipeline manufacturers and bidders for labor and services. Any contracts for the purchase of pipeline materials, labor, or services awarded by the state water commission in regard to the construction of the southwest water pipeline project must be awarded to North Dakota resident pipeline manufacturers and North Dakota resident bidders for labor and services making the lowest responsible bids if those bids do not exceed by more than five percent the lowest responsible bid submitted by a nonresident pipeline manufacturer or bidder for labor or services. As used in this section, "North Dakota resident pipeline manufacturers and bidders for labor or services" means bidders or sellers who have

maintained a bona fide place of business within this state for at least five years prior to the date on which the contract bid on is awarded. If the state water commission awards any contract for pipeline materials, labor, or services in regard to construction of the southwest water pipeline project to a nonresident bidder, the commission shall publicly give notice in a newspaper of general circulation regarding the specific reasons why it did not award the contract to a resident bidder. This section does not apply to contracts that involve federal moneys where a preference would be contrary to federal laws or regulations, contracts covered under chapter 48-01.2, or to architect, engineer, professional right of way, and land surveying services.

61-24.3-04. Water treatment. The extent and type of water treatment and the location of a water treatment plant or plants for the southwest pipeline project shall be determined by the commission, in accordance with law and as in the judgment of the commission the interests of the state and the water user entities of the southwest pipeline project are best served. In determining the location of the water treatment plant or plants, the commission may only consider alternatives that will provide treated water to all potential using entities at a cost not to exceed the cost of water from the single treatment facility originally provided for in the engineering preliminary design final report for the southwest pipeline project, state water commission project no. 1736 dated September 1982. Any existing water treatment facility that is to be used in the final pipeline design must be made available to the state in operable condition free of deferred maintenance costs and at a cost that does not exceed the actual depreciation, maintenance, and operation costs of that facility. A water treatment facility is in operable condition if, at the time it becomes part of the southwest pipeline project, it is meeting the needs of its current users. Capital improvements necessary for upgrading any existing water treatment facility to be used in the southwest pipeline project must be borne by the state water commission.

61-24.3-05. Intake structure. The intake structure to be utilized for the withdrawal of water from the water source for the southwest pipeline project shall be determined by the commission, as in the judgment of the commission the interests of the state and water user entities of the southwest pipeline project are best served. In making its determination on the selection of the intake structure, the commission shall consider, among other things, cost, project stability, capacity and ability to withdraw water, and flexibility in delivering water to water user entities.

61-24.3-06. Secondary transmission mains. Secondary transmission mains shall be constructed as part of the southwest pipeline project, as provided in the engineering preliminary design final report for the southwest pipeline project, state water commission project no. 1736, dated September 1982, except as provided in section 61-24.3-03.

61-24.3-06.1. Water distribution lines. Notwithstanding the plans and specifications of state water commission project no. 1736, as authorized in this chapter, the state water commission is hereby authorized to investigate the integration of rural water delivery into the southwest pipeline project, state water commission project no. 1736. If the commission determines that construction cost savings, operation and maintenance cost savings, operation efficiencies, and other advantages can be realized by incorporating water supply, distribution, and delivery into one entire system, and that such benefits and advantages outweigh any additional costs or disadvantages, the commission shall plan, design, integrate, incorporate, construct, operate, and maintain the southwest pipeline project and rural water delivery as one system. The exercise of this authority must be in the manner and time as the commission may deem appropriate.

61-24.3-07. Capacity for industrial use. Upon receipt of a commitment from any large industrial user through the execution of a water service contract for the purchase of water from the southwest pipeline project, or other appropriate contract, as required by the commission, the commission shall have the authority to include in the southwest pipeline project sufficient capacity to provide water to such large industrial user, and to determine the rates and charges for delivery of water to the industrial user.

61-24.3-08. Capacity for South Dakota users. Upon receipt of a commitment from water user entities in South Dakota, through the execution of a water service contract for the

purchase of water from the southwest pipeline project, whereby no less than the total additional capital costs of increasing the capacity of the southwest pipeline project to provide water through the southwest pipeline project for the water user entities in South Dakota will be paid by the water user entities in South Dakota, the commission shall have the authority to include in the southwest pipeline project the additional capacity for water user entities in South Dakota as provided in plans SD of the engineering preliminary design final report for the southwest pipeline project, state water commission project no. 1736, dated September 1982, and to determine the rates and charges for the operation and maintenance costs of delivery of water to such water user entities.

61-24.3-09. Pipeline construction standards. The commission, as in its judgment the interests of the state and the water user entities of the southwest pipeline project are best served, shall determine the pipeline construction standards to be utilized for the southwest pipeline project. In making its determination, the commission shall consider cost, maintenance, life of pipelines, and other factors it deems appropriate.

61-24.3-10. Commission to construct, operate, and maintain southwest pipeline project - Rules made by commission. The commission shall have the authority to:

1. Construct the southwest pipeline project as provided in this chapter.
2. Operate and maintain, or provide for the operation and maintenance of the southwest pipeline project.
3. Exercise all express and implied rights, powers, and authorities, including all powers and authorities granted in chapter 61-02, necessary to carry out the provisions and purposes of this chapter.
4. Make and enforce orders, rules, and bylaws for the operation and maintenance of the southwest pipeline project.
5. Sell, transfer, or exchange property acquired for the southwest pipeline project provided the commission determines the property is not necessary for the operation, maintenance, or construction of the southwest pipeline project. For a period of sixty days the property must first be offered for sale, transfer, or exchange to the current owner of the surrounding property from which the property was obtained. Any parcel of property sold, transferred, or exchanged under this section may not exceed two acres [.81 hectare]. Sections 54-01-05.2 and 54-01-05.5 do not apply to the sale, transfer, or exchange of property pursuant to this subsection.

61-24.3-10.1. Deposits of income. All income derived from the lease and management of lands acquired by the state water commission for the southwest pipeline project must be deposited in the resources trust fund.

61-24.3-11. Commission to fix water rates for the southwest pipeline project. The commission shall establish the payments for water service to be paid by water user entities for purchase of water from the southwest pipeline project. The payments for water service include each water user entity's proportionate share of the operation, maintenance, and replacement costs, and also include a component for payment for capital costs. The commission shall include in its determination of each water user entity's share of operation, maintenance, and replacement costs an amount to be deposited in the southwest pipeline project reserve fund for replacement, as established by section 61-24.3-16, for replacement and extraordinary maintenance of southwest pipeline project works. The amount of such reserve fund for replacement shall be determined by the commission.

61-24.3-12. Operation and maintenance - Commission to employ manager and employees. The commission shall obtain the assistance necessary for the operation and maintenance of the southwest pipeline project. To that end, it may appoint a manager, and may appoint subordinate officers and employees. It may designate the manager its general agent in respect to the operation and maintenance of the southwest pipeline project, but subject,

nevertheless, in such agency, to the supervision, limitation, and control of the commission. It may appoint or employ such contractors, engineers, attorneys, and other experts, agents, and servants as in the judgment of the commission the interests of the state may require, and shall define the duties, designate the titles, and fix the compensation, within legislative appropriation, and the bonds of all such persons so engaged. Subject to the control and regulation of the commission the manager of the southwest pipeline project may appoint and employ such deputies and other subordinates, and such contractors, engineers, attorneys, and other experts, agents, and servants as the manager shall deem required. The total compensation of such appointees and employees, together with other expenditures for the operation and maintenance of the southwest pipeline project, shall remain within the appropriation and earnings lawfully available in each year for such purpose.

61-24.3-13. Removal and discharge of appointees. The commission may remove and discharge any and all persons appointed in the exercise of powers granted by this chapter, whether by the commission or by the manager of the southwest pipeline project. Any such removal may be made whenever in the judgment of the commission, the public interests and the interests of the southwest pipeline project require it. All appointments and removals contemplated by this chapter shall be made as the commission shall deem most fit to promote the purpose and efficiency of the southwest pipeline project.

61-24.3-14. Operation and maintenance fund. To identify and distinguish the revenues received by the commission from water user entities for operation and maintenance of the southwest pipeline project, there shall be maintained, as a part of the moneys of the state received and kept by the state treasurer, a fund to be designated as the southwest pipeline project operation and maintenance fund. All moneys received by the state treasurer from the commission, whether from payments made by water user entities for operation and maintenance of the southwest pipeline project or otherwise, which shall be by law or by other authoritative designation made applicable to the payment of operation and maintenance of the southwest pipeline project, shall be kept by the state treasurer in such fund distinct from all other moneys and shall be disbursed by the state treasurer only for the particular purpose or purposes for which the moneys were received, and no other appropriations shall ever be made of the moneys in said fund. This section shall not be construed as preventing the state treasurer from depositing the moneys in the Bank of North Dakota.

61-24.3-15. Revenues for operation and maintenance - Deposit - Use. Money derived and received by the commission from water user entities for operation and maintenance of the southwest pipeline project shall be deposited by the commission in the operation and maintenance fund, and shall be used for no purposes other than to pay for costs and expenditures for operation and maintenance of the southwest pipeline project.

61-24.3-16. Reserve fund for replacement. To identify and distinguish the revenues received by the commission from water user entities for replacement and extraordinary maintenance of the southwest pipeline project, there shall be maintained, as a part of the moneys of the state received and kept by the state treasurer, a fund to be designated as the southwest pipeline project reserve fund for replacement. All moneys received by the state treasurer from the commission, whether from payments made by water user entities for replacement and extraordinary maintenance of the southwest pipeline project or otherwise, which shall be by law or by other authoritative designation made applicable to replacement of the southwest pipeline project, shall be kept by the state treasurer in such fund distinct from all other moneys and shall be disbursed by the state treasurer only for the particular purpose or purposes for which the moneys were received, and no other appropriations shall ever be made of the moneys in the fund. This section shall not be construed as preventing the state treasurer from depositing the moneys in the Bank of North Dakota.

61-24.3-17. Revenues for replacement - Deposit - Use. Money derived and received by the commission from water user entities for replacement and extraordinary maintenance of the southwest pipeline project shall be deposited by the commission in the reserve fund for replacement, and shall be used for no purposes other than to pay for replacement or

extraordinary maintenance of works which are part of or associated with the southwest pipeline project.

61-24.3-18. Water rates for capital costs - Deposit. Money derived and received from water user entities for capital costs of the southwest pipeline project may be pledged by the commission for the repayment of bonds issued for the construction of the southwest pipeline project. Any money not pledged must be deposited by the commission in the resources trust fund, established pursuant to section 57-51.1-07, and may be expended only pursuant to legislative appropriation for the purposes specified in subsection 1 of section 57-51.1-07.

61-24.3-19. Validation of water service contracts. Water service contracts entered by the commission for the distribution and sale of water to water user entities from the southwest pipeline project are confirmed and approved by the legislative assembly. The commission may commence a special proceeding in and by which the proceedings of the commission and the making of water service contracts are judicially examined, approved and confirmed, or disapproved and disaffirmed. The proceeding must comply as nearly as possible with the procedure authorized by sections 61-07-22 through 61-07-28 for irrigation district contracts. The requirements of section 40-33-16 are not applicable to contracts between the state water commission and cities for water service and cities for water service from the southwest pipeline project, provided the contracts were approved by the city governing body and executed before January 1, 1999.

61-24.3-20. Other pipelines - Commission approval required. Upon construction of the southwest pipeline project, utilities, corporations, limited liability companies, companies, or any other person or entity which proposes to install or construct a pipeline or other underground conveyance system which crosses or intersects the southwest pipeline project may do so only with the approval of the commission, in accordance with the requirements and conditions imposed by the commission for the pipeline or other crossing.

61-24.3-21. Authorization of facilities - Water service areas. Notwithstanding the plans and specifications of state water commission project no. 1736, as authorized in this chapter, the state water commission may include as part of the southwest pipeline project the delivery of water from southwest pipeline facilities to areas in Dunn County, Mercer County, and Oliver County and plan, design, integrate, incorporate, construct, operate, and maintain necessary facilities for this purpose as part of the southwest pipeline project, consistent with this chapter. The exercise of this authority must be in the manner and time the commission deems appropriate.

CHAPTER 61-24.5 **SOUTHWEST WATER AUTHORITY**

<u>Section</u>	<u>Page</u>
61-24.5-01 Findings and declaration of policy	61-24.5: 1
61-24.5-02 Definitions	61-24.5: 1
61-24.5-03 Southwest water authority created	61-24.5: 2
61-24.5-04 Board of directors - Officers - Meetings - Compensation	61-24.5: 2
61-24.5-05 [Repealed]	61-24.5: 2
61-24.5-06 Election of county directors of the southwest water authority	61-24.5: 2
61-24.5-07 Election of city directors of the southwest water authority	61-24.5: 3
61-24.5-08 Term of office of directors - Oath of office - Bonds	61-24.5: 3
61-24.5-09 Powers and duties of the district board of directors	61-24.5: 4
61-24.5-10 District budget - Tax levy	61-24.5: 5
61-24.5-11 District budget - Determination of amount to be levied – Adoption of levy - Limitation	61-24.5: 5
61-24.5-12 Board to certify mill levy to city auditors, county auditors, and state tax commissioner	61-24.5: 5
61-24.5-13 County auditors to extend tax levy	61-24.5: 5
61-24.5-14 County treasurer or city auditor to collect and remit district taxes - District fund established - Nonreverter - Disbursements ..	61-24.5: 5
61-24.5-15 Proceedings to confirm contract	61-24.5: 6
61-24.5-16 Procedure for exclusion from authority of county not benefited	61-24.5: 6
61-24.5-17 Appeal from orders of authority board	61-24.5: 7
61-24.5-18 Easement granted for ditches, canals, tramways, and transmission lines on any public lands	61-24.5: 7
61-24.5-19 Operation and maintenance fund	61-24.5: 7
61-24.5-20 Revenues for operation and maintenance - Deposit - Use.....	61-24.5: 7
61-24.5-21 Reserve fund for replacement.....	61-24.5: 7
61-24.5-22 Revenues for replacement - Deposit - Use	61-24.5: 7

CHAPTER 61-24.5 SOUTHWEST WATER AUTHORITY

61-24.5-01. Findings and declaration of policy. It is hereby found and declared by the legislative assembly that many areas and localities in southwestern North Dakota do not enjoy adequate quantities of high-quality drinking water. It is also found and declared that other areas and localities in southwestern North Dakota do not have sufficient quantities of water to ensure a dependable, long-term supply. It is further found and declared that supplementation of the water resources of southwestern North Dakota, with water supplies from Lake Sakakawea and the Missouri River, utilizing a pipeline transmission and delivery system, is a feasible approach to provide southwestern North Dakota with a safe, good quality, dependable source, and adequate quantity of water.

It is further declared that opportunity for greater economic security, protection of health, property, enterprise, preservation of the benefits from the land and water resources of this state, and the promotion of the prosperity and general welfare of all of the people of North Dakota depends on the effective development and utilization of the land and water resources of this state, and necessitate and require the exercise of the sovereign powers of the state and concern a public purpose. Therefore, in order to accomplish this public purpose, it is hereby declared necessary that a project to supply and distribute water to southwestern North Dakota, as authorized by chapter 61-24.3, and acts amendatory thereof and supplementary thereto, be established and constructed, to:

1. Provide for the supply and distribution of water to the people of southwestern North Dakota through a pipeline transmission and delivery system for purposes including, but not limited to, domestic, rural water, municipal, livestock, light industrial, mining, and other uses, with primary emphasis on domestic, rural water, and municipal uses.
2. Provide for the future economic welfare and property of the people of this state, and particularly the people of southwestern North Dakota, by making available waters from Lake Sakakawea and the Missouri River for beneficial and public uses.

The provisions hereof may not be construed to abrogate or limit the rights, powers, duties, and functions of the state water commission or the state engineer, but must be considered supplementary thereto.

61-24.5-02. Definitions. In this chapter, unless the context or subject matter otherwise requires:

1. "Authority" means the southwest water authority.
2. "Board" means the board of directors of the southwest water authority.
3. "Person" includes any natural person, state agency, municipality, political subdivision, public or private corporation, limited liability company, partnership, or association.
4. "Southwest pipeline project" includes the project and works, or any part thereof, authorized in chapter 61-24.3.
5. "Works" includes all property rights, easements, and franchises relating thereto and deemed necessary or convenient for operation of the southwest pipeline project, all water rights acquired and exercised by the authority in connection with the southwest pipeline project, and all means of delivering and distributing water through the utilization of a pipeline transmission and delivery system, as authorized in chapter 61-24.3.

61-24.5-03. Southwest water authority created. The southwest water authority shall consist of that part of the state which is included within the boundaries of Dunn, Stark, Golden Valley, Billings, Slope, Bowman, Adams, Grant, Hettinger, Morton, and Mercer Counties.

Such authority is a governmental agency, body politic and corporate with the authority to exercise the powers specified in this chapter, or which may be reasonably implied.

Any county adjoining the authority as herein created, or as hereafter composed, may join such authority upon application of its board of county commissioners and the approval of such application by the board of directors of the authority. The board of directors, as a condition of approval of such application, may require payments as may be equitable to equalize the burden of such county with the obligations paid or assumed by the other counties in the authority.

61-24.5-04. Board of directors - Officers - Meetings - Compensation. The authority must be governed by a board of directors who must be chosen in accordance with this chapter. One director must be elected from each county within the authority, and two directors must be elected in the city of Dickinson. The director from Stark County may not be a resident of the city of Dickinson. The board shall elect from the directors a chairman, vice chairman, and secretary. A majority of the directors constitutes a quorum for the purpose of conducting the business of the board. The board shall meet at the time and place designated by the secretary. Board members are entitled to receive as compensation an amount determined by the board not to exceed the amount per day provided members of the legislative council under section 54-35-10 and must be reimbursed for their mileage and expenses in the amount provided for by sections 44-08-04 and 54-06-09.

61-24.5-05. Initial board of directors. Repealed by S.L. 2001, ch. 569, § 4.

61-24.5-06. Election of county directors of the southwest water authority. Any person who is a resident and qualified elector of the county, who aspires to the office of director of the southwest water authority, shall, not more than seventy nor less than sixty days and before four p.m. of the sixtieth day before any primary election preceding a general election at which a director of the authority is to be elected, present to the county auditor a petition giving that person's name, post-office address, and the title of the office of the southwest water authority to which that person is seeking election. The petition must contain the signatures of not less than two percent of the qualified electors of the county as determined by the number of votes cast in the county for the office of director of the southwest water authority at the most recent preceding election at which the office of director of the southwest water authority was voted upon. Each signer of the petition shall include with that signer's name that signer's mailing address.

The petition must be accompanied by an affidavit substantially as follows:

STATE OF NORTH DAKOTA)
) ss.
County of)

I _____, being sworn, say that I reside in the county of _____ and State of North Dakota; that I am a qualified elector therein; that I am a candidate for the office of director of the Southwest Water Authority to be elected at the primary election to be held on _____, _____, and I request that my name be printed upon the no-party primary election ballot as provided by law, as a candidate for the office.

Subscribed and sworn to before me on _____, _____.

Notary Public

Upon receipt of the petition, the county auditor shall without fee place the name of the aspirant on the no-party primary election ballot as a candidate for the office of director. The candidate receiving the highest number of votes is elected.

61-24.5-07. Election of city directors of the southwest water authority. Any person who is a resident and qualified elector of the city of Dickinson who aspires to the office of director of the southwest water authority shall, at least sixty days and before five p.m. on the sixtieth day before the election, file with the city auditor a petition signed by not less than ten percent of the number of qualified electors who voted for that office in the last city election, except that the petition for the first election must be signed by not less than two hundred qualified electors. Signers of a petition must reside within the corporate limits of the city, and each signer of the petition shall include with the signer's name the signer's mailing address. The petition must include the candidate's name, post-office address, and the title of the office of the southwest water authority for which the candidate is seeking election.

STATE OF NORTH DAKOTA)
) ss.
City of Dickinson)

Subscribed and sworn to before me on _____, _____.

Upon receipt of the petition the city auditor shall without fee place the name of the aspirant on the election ballot as a candidate for the office of director. The candidate or candidates, depending on whether one or two directors are being elected, receiving the highest number of votes are elected. The provisions of chapter 40-21 govern the election of directors from the city of Dickinson for the southwest water authority.

Members of the board of directors elected from a county must be elected at the primary election and assume office on the first Monday in July following their election. Members of the board of directors elected from the city of Dickinson must be elected at the municipal election and assume office on the first Monday in July following their election.

Before assuming the duties of the office of director, each director shall take and subscribe to the oath of office prescribed by law for civil officers. The authority treasurer must be bonded in an amount as the board may prescribe.

61-24.5-09. Powers and duties of the district board of directors. The board of directors of the southwest water authority has the power:

1. To sue and be sued in the name of the authority.
2. To exercise the power of eminent domain in the manner provided by title 32 for the purpose of acquiring and securing any right, title, interest, estate, or easement necessary to carry out the duties imposed by this chapter, and particularly to acquire the necessary rights in land for the construction of pipelines, reservoirs, connections, valves, and all other appurtenant facilities used in connection with the southwest pipeline project, or any part thereof.
3. To accept funds, property, and services or other assistance, financial or otherwise, from federal, state, and other public or private sources for the purpose of aiding and promoting the construction, maintenance, and operation of the southwest pipeline project, or any part thereof.
4. To cooperate and contract with the state, its agencies, or its political subdivisions, or any agency of the United States, in research and investigation or other activities promoting the establishment, construction, development, or operation of the southwest pipeline project, or any part thereof.
5. To furnish assurances of cooperation, and as principal and guarantor or either to enter into a contract, or contracts, with the United States of America, or any department or agency thereof, and with public corporations and political subdivisions of North Dakota for the performance of obligations for the construction, operation, or maintenance of the southwest pipeline project, or any part thereof, or for the delivery of water to any such department, agency, or political subdivision.
6. To construct or purchase separately or in cooperation with agencies of the United States, or the state of North Dakota, its agencies or political subdivisions, and to equip, maintain, and operate an office and principal place of business for the district, or other buildings or facilities to carry out activities authorized by this chapter.
7. To appoint and fix the compensation of such employees as the board shall deem necessary to conduct the business and affairs of the authority, and to procure the services of engineers and other technical experts, and to retain an attorney or attorneys to assist, advise, and act for it in its proceedings.
8. To appoint from their number an executive committee and vest the same with such powers and duties as the board may from time to time delegate thereto, in order to facilitate the duties and work of the board in connection with the business affairs involved in the development, construction, operation, and maintenance of the southwest pipeline project, or any part thereof.
9. To enter into a contract or contracts for a supply of water from the United States or the state water commission and to sell, lease, and otherwise contract to furnish any such water for beneficial use to persons or entities within or outside the authority.
10. To accept, on behalf of the district, appointment of the district as fiscal agent of the United States or the state water commission and authorization to make collections of money for and on behalf of the United States or the state water commission in connection with the southwest pipeline project, or any part thereof.
11. To sell or exchange any and all real property purchased or acquired by the authority. All moneys received pursuant to any such sale or exchange shall be deposited to the credit of the authority and may be disbursed for the payment of expenses of the authority.

12. Notwithstanding any other law, to exercise the powers granted to a municipality under subsection 5 of section 40-33-01 pursuant to the limitations set forth therein. The authority may pay the cost of leasing any waterworks, mains, and water distribution system and any equipment or appliances connected therewith and any property related thereto pursuant to subsection 5 of section 40-33-01 solely from revenues to be derived by the authority from the ownership, sale, lease, disposition, and operation of the waterworks, mains, and water distribution system; the funds or any other amounts invested by the authority pursuant to the laws of the state or invested on the authority's behalf by the state, or any agency or institution of the state, in conformity with policies of the industrial commission, including investment in a guaranteed investment contract and any earnings thereon, to the extent pledged therefor; and funds, if any, appropriated annually by the board of the authority or received from federal or state sources.

61-24.5-10. District budget - Tax levy. For each taxable year through 2010, the authority may levy a tax of not to exceed one mill annually on each dollar of taxable valuation within the boundaries of the authority for the payment of administrative expenses of the authority, including per diem, mileage, and other expenses of directors, expenses of operating the office, engineering, surveying, investigations, legal, administrative, clerical, and other related expenses of the authority. *All moneys collected pursuant to the levy must be deposited to the credit of the authority and may be disbursed only as herein provided.* The board may invest any funds on hand, not needed for immediate disbursement or which are held in reserve for future payments, in bonds of the United States, certificates of deposit guaranteed or insured by the United States or an instrumentality or agency thereof, and bonds or certificates of indebtedness of the state of North Dakota or any of its political subdivisions. During the period of time in which the authority may levy one mill annually as provided herein, any joint water resource board created pursuant to section 61-16.1-11, by or among one or more of the water resource districts in the counties which are included in the authority, must be limited to one mill under the authority of section 61-16.1-11.

61-24.5-11. District budget - Determination of amount to be levied - Adoption of levy - Limitation. In July of each year the board of directors shall estimate and itemize all the administrative expenses and obligations of the district, including expenses of directors, expenses of operating the office, and any other obligations and liabilities relating to administrative, clerical, engineering, surveying, investigations, legal, and other related expenses of the authority. Upon the completion and adoption of such budget, the board of directors shall make a tax levy in an amount sufficient to meet such budget. Such levy must be in the form of a resolution, adopted by a majority vote of the members of the board of directors of the district. Such resolution must levy in mills, but may not exceed one mill, and must be sufficient to meet the administrative, engineering, surveying, investigations, legal and related expenses, obligations, and liabilities of the district as provided in the budget. The board shall also prepare and adopt an annual budget for operation, management, maintenance, and repayment of the southwest pipeline project. Revenues for operation, management, maintenance, and repayment of the southwest pipeline project must come from water service contract revenues.

61-24.5-12. Board to certify mill levy to city auditors, county auditors, and state tax commissioner. Upon the adoption of the annual mill levy by the board of directors, but no later than October first, the secretary of the board shall send one certified copy of the mill levy to the county auditor of each county which is a member of the authority. Copies of all such documents must be sent to the state tax commissioner.

61-24.5-13. County auditors to extend tax levy. The county auditor of each county within the authority, to whom a mill levy is certified in accordance with this chapter, shall extend the levy upon the tax lists for the current year against each description of real property and all personal property within the county in the same manner and with the same effect as other taxes are extended.

61-24.5-14. County treasurer or city auditor to collect and remit district taxes - District fund established - Nonreverter - Disbursements. *The treasurer of each county in*

which a mill levy has been certified shall collect the taxes, together with interest and penalty thereon, if any, in the same manner as the general taxes are collected, and shall pay over to the treasurer of the authority, on demand, all taxes, interest, and penalties so collected, and shall forthwith notify the secretary of the authority of such payment. Expenditures must be approved by the board of directors.

61-24.5-15. Proceedings to confirm contract. The board of directors of the authority, after entering into a contract with the United States government, the state of North Dakota, or with any public corporation or political subdivision of the state of North Dakota, may commence a special proceeding in and by which the proceedings of the board and the making of such contract, or contracts, must be judicially examined, approved, and confirmed, or disapproved and disaffirmed. Such proceeding must comply as nearly as possible with the procedure required in the case of irrigation districts under the laws of North Dakota.

61-24.5-16. Procedure for exclusion from authority of county not benefited.

1. Any county in the authority not benefited or not to be benefited, in whole or in part, by the southwest pipeline project, or any part thereof, may be excluded from the authority as provided herein. The board of county commissioners of any such county may by resolution direct the county auditor and the chairman of the board to file with the board of directors of the authority a petition, for and on behalf of the county, requesting the board of directors of the authority to exclude such county therefrom. A certified copy of the resolution of the county board must accompany and be filed with such petition. The petition and resolution must state specific reasons why such county will not be benefited by the southwest pipeline project, or any part thereof.
2. Within sixty days from the date of filing said resolution and petition for exclusion from the authority, the authority board shall meet to consider such petition. It may grant such petition or it may fix a time and place for a hearing thereon. If a hearing is set, the secretary of the board shall cause notice of the filing of such petition for exclusion, and of the time and place for a hearing, to be published once each week for two consecutive weeks in a newspaper of general circulation printed within the authority. The hearing mentioned in such notice must be held not less than ten nor more than twenty days after the last publication of such notice. The notice must state that any person, corporation, limited liability company, municipality, and county in the authority may appear or be represented at the hearing and show cause why the petition should or should not be granted. The board shall hear the petition at the time and place mentioned in the notice.
3. If after the hearing on the petition the authority board of directors shall determine that the county requesting to be excluded from the authority will not be benefited, the authority board shall by resolution grant the petition and shall direct the chairman and secretary to execute the order of the board excluding such county from the authority. If, however, the authority board shall decide that such county will be benefited, it shall deny the petition and direct the chairman and secretary to execute its order refusing to exclude such county from the authority. A county excluded from the authority is not liable for any obligations thereof incurred after exclusion but is liable for and shall pay to the authority taxes levied before exclusion.
4. If any contract has been made with the United States or any agency thereof, or the state of North Dakota or any agency thereof, before such petition is filed, such petition may not be granted unless consented thereto by the appropriate agency of the United States or North Dakota, and if such agency gives its consent upon condition, such conditions must be included in the order of exclusion and the county may be required to, and in that event such county shall continue to, pay and satisfy any obligations under any such contract.

61-24.5-17. Appeal from orders of authority board. An appeal from an order of the board of directors of the authority denying a petition for exclusion may be taken to the district court of the petitioning county. The appeal provided for herein must be taken within thirty days after the order of the authority board has been filed with the secretary thereof and public notice of such order has been made. The appeal must be taken by serving notice of appeal upon the secretary of the authority. The appeal must be docketed as any cause pending in district court is docketed and thereupon the court shall have and exercise original jurisdiction and shall hear and determine the cause de novo without a jury. An appeal to the supreme court may be taken by the petitioning county or by the authority, from any judgment entered therein in district court, and from any order of said court if an appeal would lie from such order if entered by the court in a civil action.

61-24.5-18. Easement granted for ditches, canals, tramways, and transmission lines on any public lands. In connection with the construction and development of the southwest pipeline project, there is granted over all the lands belonging to the state, including lands owned or acquired for highway right-of-way purposes, a right of way for pipelines, connections, valves, and all other appurtenant facilities constructed as part of the southwest pipeline project, provided, however, that the director of the department of transportation and the state engineer must approve the plans of the authority with respect to the use of any and all right of way of roads prior to such grant becoming effective.

61-24.5-19. Operation and maintenance fund. To identify and distinguish the revenues received by the southwest water authority from water user entities for operation and maintenance of the southwest pipeline project, the southwest water authority shall maintain a fund designated as the southwest pipeline project operation and maintenance fund. All moneys received by the southwest water authority, whether from payments made by water user entities, or otherwise, for operation and maintenance of the southwest pipeline project must be by law or by other authoritative designation made applicable to the payment of operation and maintenance of the southwest pipeline project, must be kept in the fund distinct from all other moneys, and must be disbursed only for the particular purpose or purposes for which the moneys were received.

61-24.5-20. Revenues for operation and maintenance - Deposit - Use. Money derived and received by the southwest water authority from water user entities for operation and maintenance of the southwest pipeline project must be deposited by the southwest water authority in the operation and maintenance fund and must be used to pay for costs and expenditures for operation and maintenance of the southwest pipeline project.

61-24.5-21. Reserve fund for replacement. To identify and distinguish the revenues received by the southwest water authority from water user entities for replacement and extraordinary maintenance of the southwest pipeline project, there must be maintained a fund to be designated as the southwest pipeline project reserve fund for replacement. All moneys received by the southwest water authority, whether from payments made by water user entities, or otherwise, for replacement and extraordinary maintenance of the southwest pipeline project, which are by law or by other authoritative designation made applicable to replacement of the southwest pipeline project, must be kept by the southwest water authority in the fund distinct from all other moneys and may be disbursed only for the particular purpose for which the moneys were received.

61-24.5-22. Revenues for replacement - Deposit - Use. Money derived and received by the southwest water authority from water user entities for replacement and extraordinary maintenance of the southwest pipeline project must be deposited by the southwest water authority in the reserve fund for replacement and must be used to pay for replacement or extraordinary maintenance of works that are part of or associated with the southwest pipeline project.

CHAPTER 61-24.6 **NORTHWEST AREA WATER SUPPLY PROJECT**

<u>Section</u>		<u>Page</u>
61-24.6-01	Findings and declaration of policy	61-24.6: 1
61-24.6-02	Northwest area water supply advisory committee - Created	61-24.6: 1
61-24.6-03	Advisory committee - Officers - Meetings - Compensation	61-24.6: 2
61-24.6-04	Powers of the state water commission in consultation with the northwest area water supply advisory committee	61-24.6: 2
61-24.6-05	State engineer - Employment of staff	61-24.6: 2
61-24.6-06	Commission to fix water rates for the northwest area water supply project	61-24.6: 2
61-24.6-07	Operation and maintenance fund - Deposit - Use	61-24.6: 2
61-24.6-08	Reserve fund for replacement - Deposit - Use	61-24.6: 3
61-24.6-09	Capital costs - Deposit - Use	61-24.6: 3
61-24.6-10	Areas served by the northwest area water supply project	61-24.6: 3

CHAPTER 61-24.6 NORTHWEST AREA WATER SUPPLY PROJECT

61-24.6-01. Findings and declaration of policy. It is hereby found and declared by the legislative assembly that many areas and localities in northwestern North Dakota do not enjoy safe drinking water, and that the water in these areas and localities contains iron, sulfates, alkali, salt, nitrates, fluoride, and other hazardous and discoloring substances. It is also found and declared that other areas and localities in northwestern North Dakota do not have sufficient quantities of water to ensure a dependable, long-term supply. It is further found and declared that supplementation of the water resources of northwestern North Dakota with water supplies from the Missouri River, utilizing a pipeline transmission and delivery system, may be the only alternative to provide northwestern North Dakota with a safe, good quality, dependable source, and adequate quantity of water.

It is further declared that effective development and utilization of the land and water resources of this state; the opportunity for greater economic security; the protection of health, property, enterprise, and the preservation of the benefits from the land and water resources of this state; and the promotion of the prosperity and general welfare of all of the people of North Dakota involve, necessitate, and require the exercise of the sovereign powers of the state and concern a public purpose. Therefore, in order to accomplish this public purpose, it is hereby declared necessary that a project be pursued that would supply and distribute water to the people of northwestern North Dakota through a pipeline transmission and delivery system for purposes including domestic, rural water districts, municipal, livestock, light industrial, mining, and other uses, with primary emphasis on domestic, rural water district, and municipal uses. In furtherance of this public purpose, the state water commission may provide for the issuance of bonds in accordance with chapter 61-02 to finance the costs of the project.

The provisions of this chapter may not be construed to abrogate or limit the rights, powers, duties, and functions of the state water commission or the state engineer, but must be considered supplementary to those rights, powers, duties, and functions.

61-24.6-02. Northwest area water supply advisory committee - Created. The northwest area water supply advisory committee consists of the following representatives, appointed by the state engineer:

1. One person from the city of Minot recommended by the Minot city council.
2. One person from the city of Williston recommended by the Williston city council.
3. One person from the Bottineau, Burke, Divide, McHenry, McLean, Mountrail, Pierce, Renville, Ward, or Williams County water resource districts recommended jointly by the governing boards of the Bottineau, Burke, Divide, McHenry, McLean, Mountrail, Pierce, Renville, Ward, or Williams County water resource districts.
4. One representative of the state water commission recommended by the commission.
5. One representative of the Three Affiliated Tribes, representing that area of the Fort Berthold Indian Reservation north of the Missouri River and Lake Sakakawea recommended by the tribal council.
6. One representative of rural water distribution systems located in northwestern North Dakota. This representative must be a resident of Bottineau, Burke, Divide, McHenry, McLean, Mountrail, Pierce, Renville, Ward, or Williams County.
7. One representative of a municipality other than the city of Minot, located in Bottineau, Burke, Divide, McHenry, McLean, Mountrail, Pierce, Renville, Ward, or Williams County.

8. One representative of the Garrison Diversion Conservancy District recommended by the board of directors of the conservancy district.
9. One at large representative.

61-24.6-03. Advisory committee - Officers - Meetings - Compensation. The northwest area water supply advisory committee shall elect a chairman and vice chairman. The advisory committee shall meet at the times and places necessary to carry out the purposes of this chapter. The advisory committee members may be reimbursed for their mileage and expenses in the amount provided for by sections 44-08-04 and 54-06-09. The advisory committee members serve at the pleasure of the state engineer. Vacancies must be filled in the same manner as original appointments are made.

61-24.6-04. Powers of the state water commission in consultation with the northwest area water supply advisory committee. The state water commission may, in consultation with the northwest area water supply advisory committee:

1. Accept funds, property, services, or other assistance, financial or otherwise, from federal, state, tribal, and other public or private sources for the purpose of aiding and promoting the development of a project to deliver water to northwestern North Dakota.
2. Cooperate and contract with the state, its agencies, or its political subdivisions, the Three Affiliated Tribes, or any agency of the United States, in research and investigation or other activities promoting the development of a project to deliver water to northwestern North Dakota.
3. Appoint and procure the services of engineers, attorneys, and others to assist in developing a project to deliver water to northwestern North Dakota.
4. Exercise such other powers as may be necessary for, or incidental to, the achievement of the purposes of this chapter.
5. Construct, operate, and manage a project to deliver water throughout northwestern North Dakota.

61-24.6-05. State engineer - Employment of staff. The state engineer may employ full-time personnel and may employ such other personnel as are necessary for the administration of this chapter and as available funds permit. Notwithstanding section 61-02-64 1, funds disbursed from the contract fund or appropriated for purposes of administering this chapter may be used for salaries and expenses of persons employed pursuant to this chapter.

61-24.6-06. Commission to fix water rates for the northwest area water supply project. The commission shall establish the payments for water service to be paid by water user entities for purchase of water from the northwest area water supply project. The payments for water service must include each water user entity's proportionate share of the operation, maintenance, and replacement costs, and also include a component for payment for capital costs. The commission shall include in its determination of each water user entity's share of operation, maintenance, and replacement costs an amount to be deposited in the northwest area water supply project reserve fund for replacement, as established by section 61-24.6-07, for replacement and extraordinary maintenance of northwest area water supply project works. The amount of the reserve fund for replacement must be determined by the commission.

61-24.6-07. Operation and maintenance fund - Deposit - Use. Revenues received by the commission from water user entities or otherwise for operation and maintenance of the northwest area water supply project must be maintained, as a part of the moneys of the state received and kept by the state treasurer in a fund to be designated as the northwest area water supply project operation and maintenance fund. All moneys received by the state treasurer for operation and maintenance of the northwest area water supply project and the interest on

moneys in the fund must be kept by the state treasurer in the fund distinct from all other moneys and must be disbursed by the state treasurer and used only for paying for costs and expenditures for operation and maintenance of the northwest area water supply project.

61-24.6-08. Reserve fund for replacement - Deposit - Use. Revenues received by the commission from water user entities or otherwise for replacement and extraordinary maintenance of the northwest area water supply project may be held pursuant to the terms of a resolution or trust indenture adopted by the commission. Any money not held pursuant to the terms of a resolution or trust indenture must be deposited by the commission and maintained, as a part of the moneys of the state received and kept by the state treasurer, in a fund designated as the northwest area water supply project reserve fund for replacement. All moneys received by the state treasurer for replacement and extraordinary maintenance of the northwest area water supply project and the interest on the moneys must be kept by the state treasurer in the fund distinct from all other moneys and must be disbursed by the state treasurer and used only for replacement and extraordinary maintenance of the northwest area water supply project.

61-24.6-09. Capital costs - Deposit - Use. Money derived and received from water user entities or otherwise for capital costs or construction of the northwest area water supply project may be held pursuant to the terms of a resolution or trust indenture adopted by the commission. Any money not held pursuant to the terms of a resolution or trust indenture must be deposited by the commission and maintained, as part of the moneys of the state received and kept by the state treasurer, in a fund designated as the northwest area water supply project fund for capital costs and construction. All moneys received by the state treasurer for capital costs and construction of the northwest area water supply project, and all interest on the moneys, must be kept by the state treasurer in the fund distinct from all other moneys and must be disbursed by the state treasurer and used only for capital costs and construction of the northwest area water supply project.

61-24.6-10. Areas served by the northwest area water supply project. The commission may provide, as part of the northwest area water supply project, delivery, distribution, and treatment of water from the Missouri River or other sources, to areas in Bottineau, Burke, Divide, McHenry, McLean, Mountrail, Pierce, Renville, Ward, and Williams Counties. The facilities for delivery of water may be from a pipeline transmission and delivery system or through other works, as determined by the commission.

**CHAPTER 61-24.7
RED RIVER VALLEY WATER SUPPLY PROJECT**

<u>Section</u>		<u>Page</u>
61-24.7-01	Legislative findings and intent – Authority to issue bonds	61-24.7: 1
61-24.7-02	Funding – Red River valley water supply project – Bond issuance amount	61-24.7: 1
61-24.7-03	Limitation of action	61-24.7: 1
61-24.7-04	Bonds payable from water development trust fund	61-24.7: 1
61-24.7-05	State funding plan	61-24.7: 2

CHAPTER 61-24.7 RED RIVER VALLEY WATER SUPPLY PROJECT

61-24.7-01. Legislative findings and intent - Authority to issue bonds.

1. The legislative assembly finds that the provision of water of sufficient quantity and quality to supply homes, businesses, industries, wildlife, and recreation in the Red River valley within this state is necessary for the protection of health, property, and enterprises and for the promotion of prosperity and the general welfare of the people of the Red River valley and that construction of the Red River valley water supply project involves and requires the exercise of the sovereign powers of the state and concerns a public purpose. Therefore, it is declared necessary and in the public interest that the state by and through the state water commission assist in financing the cost of constructing the Red River valley water supply project through the issuance of bonds.
2. In furtherance of the public purpose set forth in subsection 1, the state water commission may issue bonds under chapter 61-02 and the proceeds are appropriated for construction of the Red River valley water supply project authorized and funded in part by the federal government and designed to provide reliable sources of water of sufficient quantity and quality to supply homes, businesses, industries, wildlife, and recreation in the Red River valley within this state.
3. This chapter does not affect the state water commission's authority to otherwise issue bonds pursuant to chapter 61-02 or section 61-24.3-01.

61-24.7-02. Funding - Red River valley water supply project - Bond issuance amount. The state water commission may provide the nonfederal share of funds necessary to construct the Red River valley water supply project by issuing bonds in an amount not to exceed forty million dollars plus the cost of issuance of the bonds, capitalized interest, and reasonably required reserves. The proceeds of any bonds issued under the authority provided in this section are appropriated to the state water commission for the purposes set forth in this chapter.

61-24.7-03. Limitation of action. An action may not be brought or maintained in any court in this state questioning the validity of any bonds issued as provided in this chapter unless the action is commenced within thirty days after the adoption of the resolution of the state water commission authorizing the sale of bonds. The state water commission may commence a special proceeding at any time after July 1, 2007, in and by which the constitutionality and validity of the bonds to be issued pursuant to this chapter may be judicially examined, approved and confirmed, or disapproved and disaffirmed. Proceedings must comply as nearly as possible with the procedure required for declaratory judgment proceedings.

61-24.7-04. Bonds payable from water development trust fund.

1. Principal and interest on bonds issued for the Red River valley water supply project as provided in this chapter are payable from the water development trust fund from funds transferred from the tobacco settlement trust fund.
2. Obligations issued as provided in this chapter do not constitute a debt, liability, or obligation of the state of North Dakota or a pledge of the faith and credit of the state of North Dakota, but are payable solely from the sources as described in this chapter.
3. The state water commission shall include in its submission to the governor for inclusion by the governor in the biennial executive budget of the state for each year of the respective biennium during the term of any bonds issued as provided in this chapter an amount fully sufficient to pay the principal and interest required to be paid in each year of the biennium, if any, from moneys from the water development trust

fund. If the governor does not include in the executive budget for any reason the amounts required to be included by this section, the state water commission shall request independently that the legislative assembly amend the executive budget appropriation so as to include the amounts.

61-24.7-05. State funding plan.

1. The remaining sixty million dollars to comprise a total of one hundred million dollars to meet the one hundred million dollar state share of phase one of the Red River valley water supply project is to be funded over three bienniums. The sixty million dollars is to be derived from thirty million dollars from the general fund and thirty million dollars from the resources trust fund.
2. The state shall provide an additional one hundred million dollars of municipal, rural, and industrial water supply funds for phase two of the Red River valley water supply project, to meet the two hundred million dollar state share of the project.

**CHAPTER 61-26
CITY JOINT USE OF DRAINS**

<u>Section</u>		<u>Page</u>
61-26-01	Application for joint drain	61-26: 1
61-26-02	Hearing on joint drain	61-26: 1
61-26-03	Payments for city joint drain	61-26: 1

CHAPTER 61-26 CITY JOINT USE OF DRAINS

61-26-01. Application for joint drain. The governing body of any city or the board of commissioners of any water resource district desiring to use an existing drain under the jurisdiction of the county board of drainage commissioners, with or without modification, as a watercourse or channel to provide a water supply for the city or water resource district, may make application therefor to the board of drain commissioners of the county in which such drain is located. In such application there shall be set forth a comprehensive plan of joint use and of any proposed extensions, changes, connecting canals, mains, or other contrivances for conducting the flow of water in, to or from said drain and an offer of payment by the city or water resource district in a definite sum as a proportionate share of the cost of the existing drain, and a sum certain or a percentage offer for future maintenance costs.

61-26-02. Hearing on joint drain. Upon receipt of an application the board of drain commissioners shall call and give notice of a public hearing, in the manner provided for hearing on a petition to establish a drain, and at such hearing shall receive all evidence and opinions offered for or against the application or of suggested modifications. After such hearing the board of drain commissioners and the governing body of the city or board of commissioners of the water resource district, whichever the case may be, may enter into an agreement for the joint use of such drain setting forth in such agreement the extent, conditions, and nature of permitted use and action, the amount of payment to be made as proportionate share of original cost, and the amount or percentage of costs of future maintenance to be paid by the city or water resource district.

61-26-03. Payments for city joint drain. All moneys paid pursuant to such agreement shall be paid into the county treasury and be credited to the drain fund of such drain. In the discretion of the board of drain commissioners the amount received in payment of proportionate share of original cost of such drain which will not be required for future maintenance of the drain may be paid out to the owners of record, at the time of such payment, of land which was assessed for such drain. Applications for such payments shall be made in the form prescribed by the board of drain commissioners and payments shall be made by the execution and delivery of drain board warrants drawn on the drain fund. The payment to the owner or owners of each tract of land shall be a percentage of the total payment to be made to all the owners equal to the percentage of the cost of the drain which was assessed against such tract of land.

CHAPTER 61-28
CONTROL, PREVENTION, AND ABATEMENT OF POLLUTION OF SURFACE
WATERS

<u>Section</u>		<u>Page</u>
61-28-01	Statement of policy	61-28: 1
61-28-02	Definitions	61-28: 1
61-28-03	State water pollution prevention agency - Board	61-28: 2
61-28-04	Powers and duties	61-28: 2
61-28-05	Rules and standards	61-28: 4
61-28-06	Prohibitions	61-28: 5
61-28-06.1	Fees - Deposit in operating fund	61-28: 5
61-28-07	Proceedings	61-28: 6
61-28-08	Penalties - Injunctions	61-28: 6

CHAPTER 61-28

CONTROL, PREVENTION, AND ABATEMENT OF POLLUTION OF SURFACE

Waters

61-28-01. Statement of policy. It is hereby declared to be the policy of the state of North Dakota to act in the public interest to protect, maintain, and improve the quality of the waters in the state for continued use as public and private water supplies, propagation of wildlife, fish and aquatic life, and for domestic, agricultural, industrial, recreational, and other legitimate beneficial uses, to require necessary and reasonable treatment of sewage, industrial, or other wastes and to cooperate with other agencies in the state, agencies of other states, and the federal government in carrying out these objectives.

61-28-02. Definitions. As used in this chapter, unless the context otherwise requires:

1. "Board" means the state water pollution control board.
2. "Department" means the state department of health.
3. "Discharge" means the addition of any waste to state waters from any point source.
4. "Disposal system" means a system for disposing of wastes, either by surface or underground methods, and includes sewerage systems, treatment works, disposal wells, and other systems.
5. "Person" includes any corporation, limited liability company, individual, partnership, association, or other public or private entity, including any state or federal agency or entity responsible for managing a state or federal facility, and includes any officer or governing or managing body of any such entity.
6. "Point source" means any discernible, confined, and discrete conveyance, including any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, concentrated animal feeding operation, or vessel or other floating craft, from which wastes are or may be discharged.
7. "Pollution" means the manmade or man-induced alteration of the physical, chemical, biological, or radiological integrity of any waters of the state.
8. "Sewerage system" means pipelines or conduits, pumping stations, and force mains, and all other structures, devices, appurtenances, and facilities used for collecting or conducting wastes to an ultimate point for treatment or disposal.
9. "Treatment works" means any plant or other works used for the purpose of treating, stabilizing, or holding wastes.
10. "Wastes" means all substances which cause or tend to cause pollution of any waters of the state, including dredged spoil, solid waste, incinerator residue, sewage, garbage, sewage sludge, munitions, chemical wastes, biological materials, radiological materials, heat, wrecked or discarded equipment, rock, sand, and cellar dirt and industrial, municipal, and agricultural pollution discharged into any waters of the state.
11. "Waters of the state" means all waters within the jurisdiction of this state including all streams, lakes, ponds, impounding reservoirs, marshes, watercourses, waterways, and all other bodies or accumulations of water on or under the surface of the earth, natural or artificial, public or private, situated wholly or partly within or bordering upon the state, except those private waters that do not combine or effect a junction with natural surface or underground waters just defined.

61-28-03. State water pollution prevention agency - Board.

1. The state water pollution control board consists of thirteen persons. The board must include the state health officer, state engineer, director of the game and fish department, state geologist, and nine other members appointed by the governor, three of whom must be representatives of production agriculture, two of whom must be representatives of manufacturing and processing, one of whom must be a representative of the solid fuels industry, one of whom must be a representative of the fluid and gas fuels industry, one of whom must be a representative of the environmental sciences, and one of whom must be a representative of county or municipal government.
2. Of the nine members appointed by the governor, each shall serve six-year terms. The governor may fill any vacancy in the appointed membership of the board, and may remove any appointed member for cause.
3. The board shall select its own chairman from among its members. The heads of departments on the board may, by official order filed with the executive secretary of the board, designate a representative of the person's department to perform the duties of the member making the designation. That person, if any, shall have the powers and be subject to the duties and responsibilities of the appointing office.
4. All members of the board shall serve without compensation for their duties, but must be reimbursed for necessary travel and other expenses incurred in the performance of their official duties. Reimbursement must be paid out of funds allocated to the department for water pollution control.
5. The department shall provide the board with copies of maps, plans, documents, studies, surveys, and all other necessary information in order that the board may be fully cognizant of the current status of water pollution and its control in the state and to enable the board to advise the department in development of programs for the prevention and control of pollution of waters in the state.
6. The board shall hold at least one regular meeting each year, and any additional meetings the chairman deems necessary, at a time and place to be determined by the chairman. Upon written request of any three members the chairman shall call a special meeting. Seven members constitute a quorum.
7. The board shall consider and make recommendations regarding any rules and standards relating to water quality or pollution, ground water protection, and safe drinking of water that are adopted by the department. The department may not take final action on any rules or standards without consulting the board. The board shall consider any other matters related to the purposes of this chapter and may make recommendations on its own initiative to the department concerning the administration of this chapter.

61-28-04. Powers and duties. The department shall have and may exercise the following powers and duties:

1. To exercise general supervision of the administration and enforcement of this chapter and all rules and regulations and orders promulgated thereunder.
2. To develop comprehensive programs for the prevention, control, and abatement of new or existing pollution of the waters of the state.
3. To advise, consult, and cooperate with other agencies of the state, the federal government, other states and interstate agencies, and with affected groups, political subdivisions, and industries in furtherance of the purposes of this chapter.

4. To accept and administer loans and grants from the federal government and from other sources, public or private, for carrying out any of its functions, which loans and grants shall not be expended for other than the purposes for which provided.
5. To encourage, participate in, or conduct studies, investigations, research, and demonstrations relating to water pollution and causes, prevention, control, and abatement thereof as it may deem advisable and necessary for the discharge of its duties under this chapter.
6. To collect and disseminate information relating to water pollution and the prevention, control, and abatement thereof.
7. To issue, modify, or revoke orders:
 - a. Prohibiting or abating discharges of wastes into the waters of the state.
 - b. Requiring the construction of new disposal systems or any parts thereof or the modification, extension, or alteration of existing disposal systems or any parts thereof, or the adoption of other remedial measures to prevent, control, or abate pollution.
8. To hold such hearings, to issue notices of hearings and subpoenas requiring the attendance of such witnesses and the production of such evidence, to administer such oaths, and to take such testimony as the department deems necessary, and any of these powers may be exercised on behalf of the department by any members thereof or a hearing officer designated by it.
9. To require the prior submission of plans, specifications, and other data relative to, and to inspect the construction of, disposal systems or any part thereof in connection with the issuance of approvals as are required by this chapter.
10. To require proper maintenance and operation of disposal systems:
 - a. Have the power to require the owner or operator of any point source to:
 - (1) Establish and maintain records.
 - (2) Prepare and submit a report.
 - (3) Install, use, and maintain monitoring equipment or methods, including, where appropriate, biological monitoring methods.
 - (4) Sample effluents.
 - (5) Provide such other information as the department may reasonably require.
 - b. Have the right of entry, upon or through any premises in which an effluent source is located, or in which any records required to be maintained pursuant to subdivision a are located. Such power may be exercised by authorized agents, representatives, and employees of the department.
 - c. Have the power to have access to and copy any records, inspect any monitoring equipment or method required under subdivision a, or to sample any effluents being discharged into the waters of the state.
11. To exercise all incidental powers necessary to carry out the purposes of this chapter.

12. The department is hereby designated as the state water pollution control agency for all purposes of the Federal Water Pollution Control Act, as amended [33 U.S.C. 1251, et seq.], and is hereby authorized to take all action necessary or appropriate to secure to this state the benefits of that act and similar federal acts.
13. In the administration of standards of water quality the department shall allow a reasonable time for persons discharging wastes into the waters of the state to comply with such standards.
14. To establish and modify, jointly with the state water commission, the classification of all waters in accordance with their present and future most beneficial uses.
15. The department, with the cooperation of the state water commission, shall formulate and issue standards of water quality and classification of water according to its most beneficial uses. Such standards of quality shall be such as to protect the public health and welfare and the present and prospective future use of such waters for public water supplies, propagation of fish and aquatic life and wildlife, recreational purposes, and agricultural, industrial, and other legitimate uses.
16. To adopt effluent and new source performance standards, which include as a minimum all categories for which the federal government has set standards pursuant to the Federal Water Pollution Control Act, as amended. Such state standards shall be at least as stringent as the standards adopted by the federal government.
17. To review from time to time, at intervals of not more than three years, established classification of waters, water quality standards, and effluent standards.
18. To make rules governing the application for permits to discharge sewage, industrial wastes, or other wastes into state waters, including rules requiring the filing of plans and specifications relating to the construction, modification, or operation of disposal systems.
19. To make rules governing the issuance, denial, modification, or revocation of permits.
20. To hold any hearings necessary for the proper administration of this chapter.
21. To make rules for the administration of this chapter.
22. To initiate actions in court for the enforcement of this chapter.
23. To establish minimum requirements for the treatment of wastes.
24. The department, with the cooperation of other departments, may maintain an action for damages in the name of the state for violations of the provisions of this chapter.
25. To apply and enforce against industrial users of publicly owned treatment works, toxic effluent standards and pretreatment standards for the introduction into such treatment works of wastes which interfere with, pass through, or otherwise are incompatible with such treatment works. The department may promulgate such rules and regulations as are necessary to implement this section.
26. To impose as conditions in permits for the discharge of wastes from publicly owned treatment works requirements for information to be provided by the permittee concerning new introductions of wastes or substantial changes in the volume or character of wastes being introduced into such treatment works.

61-28-05. Rules and standards. The department may adopt rules and, jointly with the board, shall hold public hearings regarding the adoption, amendment, or repeal of rules and standards of quality of the waters of the state as provided in this chapter.

61-28-06. Prohibitions.

1. It shall be unlawful for any person:
 - a. To cause pollution of any waters of the state, or to place or cause to be placed any wastes in a location where they are likely to cause pollution of any waters of the state; and
 - b. To discharge any wastes into any waters of the state, or to otherwise cause pollution, which reduces the quality of such waters below the water quality standards established therefor by the department.
2. It is unlawful for any person to carry on any of the following activities unless the person holds a valid permit for the disposal of all wastes which are, or may be, discharged thereby into the waters of the state:
 - a. The construction, installation, modification, or operation of any disposal system or part thereof or any extension or addition thereto without plans and specifications previously approved by the department.
 - b. Cause a material increase in volume or strength of any wastes in excess of the permissive discharges specified under existing approved plans.
 - c. The construction, installation, or operation of any industrial, commercial, or other establishment or any extension or modification or addition thereof, the operation of which would cause an increase in the discharge of wastes into the waters of the state or would otherwise alter the physical, chemical, or biological properties of any waters of the state in any manner not already lawfully authorized.
 - d. The construction or use of any new outlet for the discharge of any wastes into the waters of the state.
3. Notwithstanding any other provisions of this chapter, and except as in compliance with the provisions of this chapter, and any rules and regulations promulgated hereunder, the discharge of any wastes, or the violation of any water quality standards, by any person shall be unlawful. The department may seek injunctive relief for a threatened or continuing violation of a water quality standard, including any violations of the narrative standards, if the department determines that the violation will substantially interfere with or cause or threaten to cause long-term or irreparable harm to waters of this state that the department determines has statewide or regional significance or has a substantial impact to a local community. The authority to seek injunctive relief for a violation of the water quality standards, including violations of the narrative standards, is limited to the department, after obtaining written approval of the governor, and may not be enforced by any other person.

61-28-06.1. Fees - Deposit in operating fund. The department by rule may prescribe and provide for the payment and collection of reasonable fees for the issuance and renewals of permits, licenses, and approvals to discharge sewage, industrial wastes, or other wastes into state waters. The permit fees must be based on the anticipated cost of filing and processing the application, reviewing plans and specifications relating to the construction, modification, or operation of disposal systems, and taking action on the requested permit and conducting a monitoring and inspection program to determine compliance or noncompliance with the permit. Any moneys collected for permit fees must be deposited in the department operating fund in the state treasury and any expenditure from the fund is subject to appropriation by the legislative assembly.

61-28-07. Proceedings. Any proceeding under this chapter for issuance or modification of rules, including emergency orders relating to control of water pollution or for determining compliance with or violation of this chapter, or adoption of any rule or order under this chapter by the department, must be conducted in accordance with chapter 28-32. Any person claiming to be aggrieved or adversely affected by actions taken, or by any rule or order issued under this chapter may request a hearing by the department. There is a right of appeal to the district court from any adverse ruling by the department. Where an emergency exists requiring immediate action to protect the quality of water for legitimate uses and the public health and welfare, the department, without further notice or hearing, may issue an order reciting the existence of the emergency and requiring that such immediate action be taken as is necessary to meet this emergency. Notwithstanding this chapter, the order is effective immediately. Any person to whom the order is directed shall comply immediately, but on application to the department must be afforded a hearing before the department within ten days. On the basis of that hearing, the emergency order must be continued, modified, or revoked within thirty days after the hearing. In the alternative, upon receipt of evidence that a pollution source or combination of sources is presenting an imminent and substantial endangerment to the health of persons or to the welfare of persons where the endangerment to welfare is to the livelihood of those persons, or upon receipt of evidence that pollution causes or threatens to cause a continuing violation of water quality standards in a manner that substantially interferes with or causes long-term or irreparable harm to waters of this state that the department determines has statewide or regional significance or has a substantial impact to a local community, the department may bring suit on behalf of the state in the district court for the county in which the violation is taking place to *immediately restrain any person causing or contributing to the alleged pollution to stop the discharge of pollutants causing or contributing to the pollution, or to otherwise enjoin any pollution causing a substantial water quality violation as described in this section, or to take such other action as may be necessary.*

61-28-08. Penalties - Injunctions.

1. Any person who willfully violates this chapter, or any permit condition, rule, order, limitation, or other applicable requirement implementing this chapter, is subject to a fine of not more than ten thousand dollars per day per violation, or by imprisonment for not more than one year, or both. If the conviction is for a violation committed after a first conviction of such person under this subsection, punishment shall be by a fine of not more than twenty thousand dollars per day per violation, or by imprisonment for not more than two years, or both.
2. Any person who violates this chapter or any permit condition, rule, order, limitation, or other applicable requirement implementing this chapter, with criminal negligence as defined by section 12.1-02-02, is subject to a fine of not more than ten thousand dollars per day per violation, or by imprisonment for not more than six months, or both.
3. Any person who knowingly makes any false statement, representation, or certification in any application, record, report, plan, or other document filed or required to be maintained under this chapter or any permit condition, rule, order, limitation, or other applicable requirement implementing this chapter, or who falsifies, tampers with, or knowingly renders inaccurate any monitoring device or method required to be maintained under this chapter or any permit condition, rule, order, limitation, or other applicable requirement implementing this chapter, upon conviction, is subject to a fine of not more than five thousand dollars per day per violation or by imprisonment for not more than six months, or both.
4. Any person who violates this chapter, or any permit condition, rule, order, limitation, or other applicable requirement implementing this chapter, is subject to a civil penalty not to exceed five thousand dollars per day per violation.
5. Without prior revocation of any pertinent permits, the department may, in accordance with the laws of this state governing injunctions or other process,

maintain an action in the name of the state against any person to enjoin any threatened or continuing violation of any provision of this chapter or any permit condition, rule, order, limitation, or other applicable requirement implementing this chapter. In addition to any other penalties provided in this section, or other provisions of this code, any person who violates an order for injunctive relief is subject to sanctions, not to exceed twenty-five thousand dollars per day per violation. In determining the amount of the sanction, the court shall consider the seriousness of the violation or violations, any good-faith efforts to comply with the court's order, any history of such violations, the economic impact of the sanction on the violator, the environmental and economic impacts to the resource caused by the violation or violations, the comparative environmental and economic impacts on any other resources affected, if any, and such other matters as justice may require. As an additional sanction for violating an order, the court may hold the violator in contempt and, upon the state's motion, may allow a sanction up to the value of any damages that occur to the state as a result of the violation. The authority to seek sanctions under this subsection is limited to the department or to the attorney general bringing an action on behalf of the state and may not be enforced by any other person.

**CHAPTER 61-28.1
SAFE DRINKING WATER ACT**

<u>Section</u>		<u>Page</u>
61-28.1-01	Declaration of public policy and legislative intent	61-28.1: 1
61-28.1-02	Definitions	61-28.1: 1
61-28.1-03	Powers and duties of department	61-28.1: 1
61-28.1-04	Approval of water systems	61-28.1: 2
61-28.1-05	Variances and exemptions	61-28.1: 3
61-28.1-06	Right of onsite inspection	61-28.1: 3
61-28.1-07	Certification of laboratories	61-28.1: 3
61-28.1-08	Administrative procedure and judicial review	61-28.1: 3
61-28.1-09	Injunctive proceedings	61-28.1: 3
61-28.1-10	Enforcement - Penalties - Injunction	61-28.1: 4
61-28.1-11	Drinking water treatment revolving loan fund - Purposes - Establishment.....	61-28.1: 4
61-28.1-12	Department - Powers and duties - Administration	61-28.1: 4

CHAPTER 61-28.1

SAFE DRINKING WATER ACT

61-28.1-01. Declaration of public policy and legislative intent. The legislative assembly declares it to be the policy of this state that safe supplies of drinking water are essential to the maintenance of public health and welfare. Those persons supplied with water from public water systems must be able to rely with confidence upon the quality of water publicly used for human consumption. Those persons served by public water systems are entitled to regulation of those systems so that they may purchase healthful water, free of harmful contaminants. It is the intention of the legislative assembly that these policies will be fulfilled by the state in accordance with the terms of this chapter and consistent with the provisions of the federal Safe Drinking Water Act of 1974.

61-28.1-02. Definitions. As used herein, unless the context or subject matter otherwise requires:

1. "Contaminant" means any physical, chemical, biological, or radiological substance or matter in water.
2. "Department" means the state department of health.
3. "Maximum contaminant level" means the maximum permissible level of contaminant in water which is delivered to any user of a public water system.
4. "Person" means any individual, corporation, limited liability company, company, association, partnership, or municipality.
5. "Public water system" means a system for the provision to the public of piped water for human consumption, if such system has at least fifteen service connections or regularly serves at least twenty-five individuals, and includes:
 - a. Any collection, treatment, storage, or distribution facilities under control of the operator of such system and used primarily in connection with such system.
 - b. Any collection or pretreatment storage facilities not under such control which are used primarily in connection with such system.
6. "Supplier of water" means any person who owns or operates a public water system.

61-28.1-03. Powers and duties of department. The department may exercise the following powers and shall have the following duties:

1. Administer and enforce a safe drinking water program pursuant to the provisions of this chapter.
2. Provide technical assistance on request to public water systems of the state and other persons, and cooperate with appropriate federal agencies.
3. Advise, consult, and cooperate with other public agencies and with affected groups and industries.
4. Issue such orders as may be necessary to effectuate the purposes of this chapter and enforce the same by all appropriate administrative and judicial process.
5. Maintain an inventory of public water systems within the state, which inventory may consist of such information as the department deems necessary.
6. Conduct sanitary surveys of public water systems within the state.

7. Adopt rules and regulations relating to maximum contaminant levels, monitoring and analytical requirements and reporting, public notification, and recordkeeping which the department determines are necessary to protect public health and welfare.
8. Adopt rules and regulations relating to the siting, construction, operation, and modification of public water systems which the department determines are necessary to prevent violation of maximum contaminant levels.
9. Require the submission of plans, specifications, and such other information as it deems necessary.
10. Establish a plan for the provision of safe drinking water under emergency circumstances.
11. Require each supplier of water to keep such records and make such reports to the department as it may deem necessary.
12. Establish a schedule of fees that may be charged by the department for laboratory tests conducted at the request of any supplier of water. Such fees shall be deposited in the general fund.
13. Require any supplier of water to notify the users of such public water system of any violations of any provision of this chapter, any regulation, the terms or conditions of any approval, any variance or exemption, or any order issued by the department.
14. Request and accept grants of funds or services from any federal or state agency, or any other source, public or private, and to administer such grants in accordance with any terms or conditions thereof. Any such grants received shall be used only for the purposes for which they are made.
15. Designate the state department of health as the state safe drinking water agency for all purposes of the federal Safe Drinking Water Act and is authorized to take all actions necessary and appropriate to secure for the state the benefit of such Act and any grants made thereunder.
16. Ensure that all new public water systems, excluding those that principally provide service to transients, commencing operation after October 1, 1999, demonstrate technical, managerial, and financial capacity to comply with all rules adopted under this chapter which are in effect, or will be in effect, on the date of commencement of operations.
17. Develop and implement a strategy to assist all public water systems in acquiring and maintaining technical, managerial, and financial capability to comply with all rules adopted under this chapter.

61-28.1-04. Approval of water systems.

1. No person shall construct, install, modify, use, or operate a public water system without prior approval from the department or in violation of the terms of, conditions imposed upon, or order of the department concerning such approval.
2. The department shall provide for the issuance, suspension, revocation, modification, and renewal of any approval required pursuant to this section.
3. Approval by the department shall not relieve any person of the responsibility to comply with any requirements of law or any rule or regulation.
4. The department may provide for the collection of reasonable fees for the approval required pursuant to this section. Such fees shall be deposited in the department

operating fund in the state treasury and shall be spent subject to appropriation by the legislative assembly.

61-28.1-05. Variances and exemptions. The department may issue variances or exemptions and make rules and regulations governing the issuance, denial, modification, revocation, and suspension of the same to noncomplying water systems. Such variances and exemptions shall be accompanied by a compliance time schedule requiring compliance within such time as the department shall determine.

61-28.1-06. Right of onsite inspection.

1. Any duly authorized officer, employee, or agent of the department may enter and inspect any property, premise, or place on or at which a public water system is located or is being constructed, installed, or established at any reasonable time for the purpose of ascertaining the state of compliance with this chapter and rules and regulations adopted pursuant thereto. If requested by the owner or operator of the premises, a report setting forth all facts found which relate to compliance status shall be forwarded to that owner or operator.
2. The department may at any reasonable time conduct tests and take samples of water and other materials which affect or may affect maximum contaminant levels at any public water system and shall have the power to have access to and copy any records required by department rules or regulations to be maintained and to inspect any monitoring equipment located on the premises.

61-28.1-07. Certification of laboratories. No laboratory analysis of water taken from a public water system or any report of such analysis required by this chapter or any rule adopted pursuant to this chapter shall be accepted by the department unless such analysis or report shall be made by the department or by any other laboratory certified by the department for such purposes. The department shall provide for the certification of any laboratory, for the purposes of this section, which meets such criteria as the department may establish to ensure the accuracy of laboratory analyses.

61-28.1-08. Administrative procedure and judicial review. Any proceeding under this chapter for:

1. The issuance or modification of rules and regulations including emergency orders; or
2. The determination of compliance with rules and regulations of the department,

shall be conducted in accordance with the provisions of chapter 28-32, and appeals may be taken as therein provided. Where an emergency exists requiring immediate action to protect the public health and safety, the department may, without notice or hearing, issue an order reciting the existence of such emergency. Notwithstanding any provision of this chapter, such order shall be effective immediately, but on application to the department within ten days of such order any person to whom such order is directed shall be afforded a hearing. Such hearing shall be in accordance with chapter 28-32. On the basis of such hearing, the emergency order shall be continued, modified, or revoked, within thirty days after such hearing.

61-28.1-09. Injunction proceedings. The violation of any provision of this chapter, or any rule, regulation, or order issued thereunder, is declared a nuisance inimical to the public health, welfare, and safety. Whenever in the judgment of the department any person has engaged in or is about to engage in any acts or practices which constitute a violation of this chapter, or any rule, regulation, or order issued hereunder, the department may maintain an action in the name of the state enjoining such action or practices or for an order directing compliance and, upon a showing by the department that such person has engaged or is about to engage in any such acts or practices, a permanent or temporary injunction, restraining order, or other order may be granted.

61-28.1-10. Enforcement - Penalties - Injunction.

1. If, after the completion of the administrative hearing process, the department determines that a violation of this chapter, or any rule, regulation, or order of the department issued under this chapter has occurred, it shall make all of its evidence and findings available to the attorney general for use in any remedial action the attorney general's office determines to be appropriate, including an action for injunctive relief.
2. Any person who willfully violates this chapter or any regulation or order of the department shall be punished by a civil penalty of not more than ten thousand dollars per day of violation or an administrative penalty as follows:
 - a. One thousand dollars per day per violation in the case of a system serving a population of more than ten thousand.
 - b. An amount adequate to ensure compliance in the case of any system not under subdivision a.
3. Any person who violates this chapter, or any rule implementing this chapter, and any person who violates any order issued by the department under this chapter is subject to a civil penalty not to exceed five thousand dollars per day of violation or an administrative penalty as follows:
 - a. One thousand dollars per day per violation in the case of a system serving a population of more than ten thousand.
 - b. An amount adequate to ensure compliance in the case of any system not under subdivision a.

Nothing in this section shall be construed to deny use of the remedy of injunctive relief where it is deemed appropriate.

61-28.1-11. Drinking water treatment revolving loan fund - Purposes - Establishment. To coordinate funding for public water systems in North Dakota, there is established a drinking water treatment revolving loan fund to be administered by the department. The loan fund is also authorized under section 1452(a) of the federal Safe Drinking Water Act, as amended. Grants from the federal government or its agencies, including the United States environmental protection agency, allotted to the state for the capitalization of the drinking water treatment revolving loan fund, and required state matching funds must be deposited in the drinking water treatment revolving loan fund in compliance with the terms of the grants. The principal of the grants must be available in perpetuity for providing financial assistance as allowed under the Safe Drinking Water Act. To the extent amounts in the revolving loan fund are not required for current obligations or expenditures, these amounts must be invested in interest-bearing obligations.

61-28.1-12. Department - Powers and duties - Administration. The department has the following powers and duties and shall administer the drinking water treatment revolving loan fund as follows:

1. To apply for and accept grants of money from the United States environmental protection agency or other federal agencies which must be deposited in the drinking water treatment revolving loan fund to be used for purposes authorized under the Safe Drinking Water Act, including the following:
 - a. To provide loans or loan guarantees, or other financial assistance, to community water systems and nonprofit noncommunity water systems eligible for assistance from the revolving loan fund.

- b. As a source of revenue and security for the payment of principal and interest on bonds issued by the state through the public finance authority if the bond proceeds are deposited in the revolving loan fund.
 - c. To buy or refinance debt obligations issued after July 1, 1993, to finance a project eligible for assistance from the revolving loan fund.
 - d. To guarantee or purchase insurance for debt obligations issued to finance a project eligible for assistance from the revolving loan fund.
 - e. To provide other financial and technical assistance and to make any other expenditure authorized under the Safe Drinking Water Act.
 - f. To earn interest before the disbursement of financial or technical assistance.
 - g. To pay administrative expenses associated with the revolving loan fund as authorized under the Safe Drinking Water Act.
- 2. To administer the drinking water treatment revolving loan fund as established. The department may enter into *contracts and other agreements in connection with the operation of the drinking water treatment revolving loan fund to the extent necessary or convenient for the implementation of the drinking water treatment revolving loan fund*. The department may combine the financial administration of the drinking water treatment revolving loan fund and the financial administration of the water pollution control revolving loan fund established under chapter 61-28.2. The department may cross-collateralize the drinking water treatment revolving loan fund and the water pollution control revolving loan fund as authorized by the administrator of the federal environmental protection agency under the Safe Drinking Water Act.
 - 3. To administer and disburse funds with the approval of the state water commission and in accordance with section 1452(a) of the federal Safe Drinking Water Act [42 U.S.C. 300j], as amended.
 - 4. To establish assistance priorities and to expend grant funds pursuant to the priority list for the drinking water treatment revolving loan fund, after consulting with and obtaining the approval of the state water commission.
 - 5. To adopt rules necessary for administering the drinking water treatment revolving loan fund.

The governor may transfer grant funds from the drinking water treatment revolving loan fund to the water pollution control revolving loan fund established by chapter 61-28.2 and from the water pollution control revolving loan fund to the drinking water treatment revolving loan fund, as authorized by the Safe Drinking Water Act.

CHAPTER 61-28.2

WATER POLLUTION CONTROL REVOLVING LOAN FUND

61-28.2-01. Water pollution control revolving loan fund program - Purposes - Establishment - Capitalization of fund - Disposition of moneys - Administration.

1. It is the determination of the legislative assembly that the federal funds for the administration and implementation of the federal wastewater construction grants program will decline within the years to come, thereby decreasing the amount of funds that the state will have to operate and carry out the functions that it has been assigned to accomplish. In order to continue to provide funds to political subdivisions for the planning, design, construction, and rehabilitation of wastewater treatment facilities, public water supply systems, and other lawful activities connected with this program, it is the purpose of this section to provide for the establishment of a revolving loan fund to be capitalized by federal grants, matching state funds when required, and by any other funds generated by the operation of the revolving loan fund.
2. There is established the water pollution control revolving loan fund, which must be maintained and operated by the state department of health. Grants from the federal government or its agencies allotted to the state for the capitalization of the revolving loan fund, and state matching funds when required, must be deposited directly in the revolving loan fund in compliance with the terms of the federal grant. Money in the revolving loan fund must be expended in a manner consistent with terms and conditions of the grants received by the state and may be used to offer loan guarantees; to provide payments to reduce interest on loans and loan guarantees; to make bond interest subsidies; to provide bond guarantees on behalf of municipalities, other local political subdivisions, and intermunicipal or interstate agencies; to provide assistance to a municipality, other local political subdivisions, or intermunicipal or interstate agencies with respect to the nonfederal share of the costs of a project; to finance the cost of facility planning and the preparation of plans, specifications, and estimates for construction of publicly owned treatment works or public water supply systems; to provide financial assistance for the construction and rehabilitation of a project on the state priority list; to secure principal and interest on bonds issued by a public trust having the state of North Dakota as its beneficiary, or the public finance authority if the proceeds of such bonds are deposited in the revolving loan fund and to the extent provided in the terms of the federal grant; to provide for loan guarantees for similar revolving funds established by municipalities, other local political subdivisions, or intermunicipal agencies; to purchase debt incurred by municipalities or other local political subdivisions for wastewater treatment projects or public water supply systems; to improve credit market access by guaranteeing or purchasing insurance or other credit enhancement devices for local obligations or obligations of a public trust having the state of North Dakota as its beneficiary or the public finance authority; to fund other programs which the federal government authorizes by the terms of its grants; to fund the administrative expenses of the department associated with the revolving loan fund; and to provide for any other expenditure consistent with the federal grant program and state law. Money not currently needed for the operation of the revolving loan fund or otherwise dedicated may be invested. All interest earned on investments must be credited to the revolving loan fund.
3. The department shall administer the revolving loan fund. The department may enter into contracts and other agreements in connection with the operation of the revolving loan fund, including contracts and agreements with federal agencies, political subdivisions, public trusts having the state of North Dakota as beneficiary or the public finance authority, and other parties to the extent necessary or convenient for the implementation of the revolving loan fund program. The department shall

maintain full authority for the operation of the revolving loan fund in accordance with applicable federal and state law.

4. The department has the following powers and duties in regard to the revolving loan fund:
 - a. To apply for and accept grants of money from the United States environmental protection agency or other federal agencies for the purpose of making funds available to political subdivisions for the planning, design, construction, and rehabilitation of wastewater treatment facilities, public water supply systems, and other related activities. The department may contract to receive such grants, agree to match the grant in whole or in part when required, and to comply with applicable federal laws and regulations in order to secure the grants. Money received through these grants and state matching funds must be deposited into the water pollution control revolving loan fund or used for appropriate administrative purposes.
 - b. To administer the revolving loan fund as established. The department may enter into contracts and other agreements in connection with the operation of the revolving loan fund to the extent necessary or convenient for the implementation of the revolving loan fund program.
 - c. To administer and disburse funds in accordance with the federal Clean Water and Safe Drinking Water Acts, as amended.
 - d. To adopt rules as necessary to carry out the provisions of this chapter and meet the requirements of the federal Clean Water and Safe Drinking Water Acts, as amended.

CHAPTER 61-29
LITTLE MISSOURI STATE SCENIC RIVER ACT

<u>Section</u>		<u>Page</u>
61-29-01	Short title	61-29: 1
61-29-02	Intent	61-29: 1
61-29-03	Definitions	61-29: 1
61-29-04	Administration	61-29: 1
61-29-05	Powers and duties of commission	61-29: 1
61-29-06	Management	61-29: 1

CHAPTER 61-29

LITTLE MISSOURI STATE SCENIC RIVER ACT

61-29-01. Short title. This chapter may be cited as the "Little Missouri State Scenic River Act".

61-29-02. Intent. The purpose of this chapter shall be to preserve the Little Missouri River as nearly as possible in its present state, which shall mean that the river will be maintained in a free-flowing natural condition, and to establish a Little Missouri River commission.

61-29-03. Definitions. For the purposes of this chapter, unless the context otherwise indicates:

1. "Free-flowing" shall mean existing or flowing in a natural condition without impoundment, diversion, straightening, or other modification of the waterway.
2. "Little Missouri River" means the river commencing at the North Dakota-South Dakota state border and terminating at its juncture with Lake Sakakawea, with such juncture defined as the bridge crossing of state highway twenty-two in section thirty-four, range ninety-five west, township one hundred forty-eight north, with boundaries established as the natural channels of the river to the low-water mark.

61-29-04. Administration. This chapter must be administered by a Little Missouri River commission composed of the director of the parks and recreation department, the state health officer of the state department of health, the chief engineer of the state water commission, or their designated representatives, and one member from each of the following counties: McKenzie, Billings, Slope, Golden Valley, Dunn, and Bowman. The commission members representing the above-mentioned counties must be appointed by their respective boards of county commissioners and shall serve without compensation except that each appointing board of county commissioners may reimburse its county representative for actual and necessary mileage to and from meetings of the commission at the same rate as state officers. The county representatives appointed must be resident landowners who live adjacent to the Little Missouri River with the exception of the Golden Valley county representative. A county representative unable to attend a meeting of the commission may be represented by a person who has a written proxy from the representative authorizing that person to act and vote for the representative. The proxy must be a resident landowner of the county that the proxy is representing, but need not live adjacent to the Little Missouri River. The county members shall serve terms of office as follows: two members shall serve one-year terms, two members shall serve two-year terms, and two members shall serve three-year terms.

61-29-05. Powers and duties of commission. The commission may advise local or other units of government to afford the protection adequate to maintain the scenic, historic, and recreational qualities of the Little Missouri River and its tributary streams. The commission shall also have the power and duties of promulgating management policies to coordinate all activities within the confines of the Little Missouri River when such action is deemed necessary.

61-29-06. Management. Channelization, reservoir construction, or diversion other than for agricultural or recreational purposes and the dredging of waters within the confines of the Little Missouri scenic river and all Little Missouri tributary streams are expressly prohibited. Flood control dikes may be constructed within the floodplain of the Little Missouri. Diking and riprapping for bank erosion control shall be permitted within the confines of the Little Missouri scenic river. The construction of impoundments for any purpose on the Little Missouri mainstream shall be prohibited.

This chapter shall in no way affect or diminish the rights of owners of the land bordering the river to use the waters for domestic purposes, including livestock watering, or any other rights of riparian landowners.

**CHAPTER 61-30
LAKE PROTECTION AND REHABILITATION**

<u>Section</u>		<u>Page</u>
61-30-01	Definitions	61-30: 1
61-30-02	Eligibility and priority	61-30: 1
61-30-03	Grants	61-30: 1
61-30-04	Public access	61-30: 1
61-30-05	Conservation district plan	61-30: 1

CHAPTER 61-30

LAKE PROTECTION AND REHABILITATION

61-30-01. Definitions. In this chapter, unless the context otherwise requires, the term:

1. "Department" means the state department of health.
2. "Eligible project cost" means costs under construction contracts, supervision of construction work; administration; materials and equipment acquired, consumed, or expended specifically for the project; and preparation of construction drawings, specifications, estimates, and construction contract documents.
3. "Lake protection and rehabilitation projects" means projects which are designed to reduce eutrophication of lakes through watershed or in-lake treatments, or both.
4. "Unit of government" means political subdivisions of the state or state agencies with responsibilities for public lake development and control.

61-30-02. Eligibility and priority. The department shall promulgate rules for determining the eligibility and priority rating of lakes for protection and rehabilitation projects. Criteria to be considered shall include but not be limited to the following:

1. Severity of the problem;
2. Impact on area recreation and fisheries;
3. The likely effectiveness of the plan; and
4. Ability of the applicant unit of government to implement the plan.

The department shall, pursuant to such rules, establish a priority list of lakes eligible for protection and rehabilitation.

61-30-03. Grants. Grants shall be made only to units of government and only for eligible lakes at a sum not to exceed twenty-five percent of the eligible project cost when federal funding is available. No grants shall be made for studies to determine the necessity or feasibility of eligible projects.

61-30-04. Public access. No funds appropriated in this chapter may be used for lake protection and rehabilitation projects unless adequate public access to and use of the lake is assured.

61-30-05. Conservation district plan. No application for state funds may be accepted unless assurance has been given in writing to the applicant by any affected soil conservation district that a plan for lake protection and rehabilitation which controls and identifies pollutants from point and nonpoint sources which come under the jurisdiction of the district has been approved by the district.

**CHAPTER 61-31
WATERBANK PROGRAM**

<u>Section</u>		<u>Page</u>
61-31-01	Rulemaking authority	61-31: 1
61-31-02	Definitions	61-31: 1
61-31-03	Waterbank agreements	61-31: 1
61-31-04	Duties of landowner	61-31: 1
61-31-05	Duties of commissioner	61-31: 2
61-31-06	Renewal of agreement - Transfer of lands	61-31: 3
61-31-07	Termination of agreement	61-31: 3
61-31-08	Conservation and development practices	61-31: 3
61-31-09	[Repealed]	61-31: 3
61-31-10	Authorization for receipt of funds - Continuing appropriation	61-31: 3

CHAPTER 61-31 WATERBANK PROGRAM

61-31-01. Rulemaking authority. The agriculture commissioner is authorized to adopt rules, pursuant to chapter 28-32, to implement this chapter.

61-31-02. Definitions. In this chapter, unless the context or subject matter otherwise provides:

1. "Adjacent lands" means lands bordering or within one-fourth mile of the wetland.
2. "Commissioner" means the agriculture commissioner.
3. "Landowner" means the person, including a lessee, who has actual use and exclusive possession of the land.
4. "Participant" means the landowner participating in the program.
5. "Program" means the state waterbank program.
6. "State assessment team" means representatives from the department of agriculture, the game and fish department, the state engineer's staff, the United States department of agriculture's soil conservation service, and the United States fish and wildlife service.
7. "Wetlands" means a natural depressional area that is capable of holding shallow, temporary, intermittent, or permanent water. It does not include sheetwater.

61-31-03. Waterbank agreements. The commissioner shall have authority to enter into agreements with landowners for the conservation of wetlands. These agreements shall be entered into for a period of five or ten years, with provision for renewal for additional five-year or ten-year periods. The commissioner shall reexamine the payment rates at the beginning of the fifth year of any ten-year initial or renewal period and before the beginning of any renewal period and, providing that funds are available, make needed adjustments in rates for any initial or renewal period.

61-31-04. Duties of landowner. In the agreement between the commissioner and a landowner, the landowner shall agree:

1. To place in the program for the period of the agreement eligible wetland areas, together with such adjacent areas as determined desirable by the commissioner. These wetlands and adjacent areas may include areas covered by a federal or state government easement which permits agricultural use, except for federal waterbank agreements pursuant to the federal waterbank program [Pub. L. 91-559; 16 U.S.C. 1301 et seq.]. However, in the event that any eligible wetland and adjacent areas are covered by a separate federal or state government easement, the commissioner shall reduce payment rates as appropriate.
2. Not to drain, burn, fill, or otherwise destroy the wetland character of such areas.
3. Not to use such areas for agricultural purposes, except as determined by the commissioner.
4. To effectuate a wetland conservation and development plan for the land in accordance with the terms of the agreement, unless any requirement thereof is waived or modified by the commissioner pursuant to section 61-31-07.

5. To forfeit all rights to further payments or grants under the agreement and the commissioner may require the landowner to refund to the state all payments or grants received thereunder upon violation of the agreement if the commissioner determines that such violation is of such a nature as to warrant termination of the agreement, or to make refunds or accept such payment adjustments as the commissioner may deem appropriate if the violation does not warrant termination of the agreement.
6. Upon transfer of the landowner's right and interest in the lands during the agreement period, to forfeit all rights to further payments or grants under the agreement and the commissioner may require that landowner refund to the state all payments or grants received thereunder unless the transferee of any such land agrees with the commissioner to assume all obligations of the agreement.
7. To additional provisions which the commissioner determines are desirable and includes in the agreement to effectuate the purposes of the program or to facilitate its administration.

The agreement of the landowner under this chapter shall be made binding on any tenant or operator of the land covered by the agreement

61-31-05. Duties of commissioner. In return for the agreement of the landowner, the commissioner shall:

1. Make an annual payment to the landowner for the period of the agreement at the rate determined by the commissioner to be fair and reasonable in consideration of the obligations undertaken by the landowner. If the landowner and commissioner agree, all or part of the payments to the landowner may be issued at the onset of the agreement.
2. Provide advice on conservation and development practices on the wetlands and adjacent areas, and to bear such part of the average cost of establishing and maintaining such practices, as the commissioner determines to be appropriate.
3. Increase the rate of annual payments by an amount determined by the commissioner to be appropriate, if the landowner agrees to permit, without other compensation, access to such acreage by the general public subject to applicable state law.
4. Agree that during a drought emergency up to one hundred percent of the grass cover that is part of a waterbank contract may be released to the landowner for haying or grazing, if the portion not released remains in a solid block, and if grazed is protected by an adequate fence, including a temporary electric fence that has been approved by the commissioner. The release date must be determined by the commissioner with the approval of the director of the game and fish department. The landowner may hay or graze released land at a per acre [.40 hectare] rate, established by the commissioner, which must be deducted from the next waterbank payment. If haying or grazing privileges are awarded to any person other than the landowner, the commissioner shall collect for the hay harvested and the landowner is entitled to receive that person's full waterbank payment.
5. The commissioner shall assemble a state assessment team that may assist the commissioner in fulfilling the objectives of the program. The state assessment team may make recommendations to the commissioner regarding applications, and develop management guidelines to be approved by the commissioner which include technical and management practices and rates of payment and a standardized priority system for evaluating applications. Applications for the program may be submitted to any representatives of the state assessment team or their agencies to be reviewed and submitted to the commissioner.

61-31-06. Renewal of agreement - Transfer of lands. Any agreement may be renewed or extended at the end of the agreement period for an additional period of five or ten years by mutual agreement of the commissioner and the landowner, subject to any rate redetermination by the commissioner. If during the agreement period the landowner sells or otherwise divests the ownership or right of occupancy of the land, the new landowner may continue such agreement under the same terms or conditions, or enter into a new agreement in accordance with the provisions of this section, including the provisions for renewal and adjustment of payment rates, or the new landowner may choose not to participate in the program.

61-31-07. Termination of agreement. The commissioner may terminate or amend any agreement by mutual agreement with the landowner if the commissioner determines that the termination would be in the public interest.

61-31-08. Conservation and development practices. For the purpose and implementation of wetland conservation and development plans as provided in sections 61-31-04 and 61-31-05, the commissioner has authority to enter into agreements with the director of the game and fish department for any assistance which may be appropriate and which will further the objectives of this chapter.

61-31-09. Drainage of wetlands. Repealed by S.L. 1993, ch. 609, § 7.

61-31-10. Authorization for receipt of funds - Continuing appropriation. The commissioner is authorized to receive funds for this program from any private or public source, and is also authorized to receive any funds from any North Dakota state agency, which have been specifically authorized for that purpose by the legislative assembly. The commissioner shall work with the governor, director of the game and fish department, United States fish and wildlife service, nonprofit conservation organizations, and any other public official or private organization or citizen to develop sources of funding to implement this chapter.

All funds received by the commissioner from any private or public source and from any North Dakota state agency as well as all funds appropriated by the legislative assembly for implementing this chapter must be transferred to a special fund in the state treasury, which is hereby created, to be known as the state waterbank fund. The state waterbank fund and interest earned thereon is hereby appropriated as a standing and continuing appropriation solely for the purpose of implementing this chapter, including payment of money due upon waterbank agreements entered under this chapter.

CHAPTER 61-32 WETLANDS

<u>Section</u>	<u>Page</u>
61-32-01 [Repealed]	61-32: 1
61-32-02 [Repealed]	61-32: 1
61-32-03 Permit to drain waters required - Penalty	61-32: 1
61-32-04 [Repealed]	61-32: 1
61-32-05 [Repealed]	61-32: 1
61-32-06 [Repealed]	61-32: 1
61-32-07 Closing a noncomplying drain - Notice and hearing - Appeal - Injunction - Frivolous complaints	61-32: 1
61-32-08 Appeal of board decisions - State engineer review - Closing of noncomplying drains	61-32: 2
61-32-09 [Repealed]	61-32: 3
61-32-10 Exemption	61-32: 3
61-32-11 [Repealed]	61-32: 3

CHAPTER 61-32 WETLANDS

61-32-01. Legislative policy and intent. Repealed by S.L. 1995, ch. 599, § 3.

61-32-02. Definitions. Repealed by S.L. 1995, ch. 599, § 3.

61-32-03. Permit to drain waters required - Penalty. Any person, before draining a pond, slough, lake, or sheetwater, or any series thereof, which has a watershed area comprising eighty acres [32.37 hectares] or more, shall first secure a permit to do so. The permit application must be submitted to the state engineer. The state engineer shall refer the application to the water resource district or districts within which is found a majority of the watershed or drainage area of the pond, slough, lake, or sheetwater for consideration and approval, but the state engineer may require that applications proposing drainage of statewide or interdistrict significance be returned to the state engineer for final approval. A permit may not be granted until an investigation discloses that the quantity of water which will be drained from the pond, slough, lake, or sheetwater, or any series thereof, will not flood or adversely affect downstream lands. If the investigation shows that the proposed drainage will flood or adversely affect lands of downstream landowners, the water resource board may not issue a permit until flowage easements are obtained. The flowage easements must be filed for record in the office of the recorder of the county or counties in which the lands are situated. An owner of land proposing to drain shall undertake and agree to pay the expenses incurred in making the required investigation. This section does not apply to the construction or maintenance of any existing or prospective drain constructed under the supervision of a state or federal agency, as determined by the state engineer.

Any person draining, or causing to be drained, a pond, slough, lake, or sheetwater, or any series thereof, which has a watershed area comprising eighty acres [32.37 hectares] or more, without first securing a permit to do so, as provided by this section, is liable for all damage sustained by any person caused by the draining, and is guilty of an infraction. As used in this section, sheetwater means shallow water that floods land not normally subject to standing water. The state engineer may adopt rules for temporary permits for emergency drainage.

61-32-04. Administration - Rulemaking authority - Guidelines. Repealed by S.L. 1995, ch. 599, § 3.

61-32-05. Wetlands bank. Repealed by S.L. 1995, ch. 599, § 3.

61-32-06. Uniform wetlands classification. Repealed by S.L. 1995, ch. 599, § 3.

61-32-07. Closing a noncomplying drain - Notice and hearing - Appeal - Injunction - Frivolous complaints. Only a landowner experiencing flooding or adverse effects from an unauthorized drain constructed before January 1, 1975, may file a complaint with the water resource board. Any person may file a complaint about an unauthorized drain constructed after January 1, 1975. Upon receipt of a complaint of unauthorized drainage, the water resource board shall promptly investigate and make a determination of the facts with respect to the complaint. If the board determines that a drain, lateral drain, or ditch has been opened or established by a landowner or tenant contrary to this title or any rules adopted by the board, the board shall notify the landowner by registered mail at the landowner's post-office address of record. A copy of the notice must also be sent to the tenant, if known. The notice must specify the nature and extent of the noncompliance and must state that if the drain, lateral drain, or ditch is not closed or filled within a reasonable time as the board determines, but not less than fifteen days, the board shall procure the closing or filling of the drain, lateral drain, or ditch and assess the cost of the closing or filling, or the portion the board determines, against the property of the landowner responsible. The notice must also state that the affected landowner, within fifteen days of the date the notice is mailed, may demand, in writing, a hearing on the matter. Upon receipt of the demand, the board shall set a hearing date within fifteen days from the date the demand is received. In the event of an emergency, the board may immediately apply to the

appropriate district court for an injunction prohibiting the landowner or tenant from constructing or maintaining the drain, lateral drain, or ditch and ordering the closure of the illegal drain. Assessments levied under this section must be collected in the same manner as assessments authorized by chapter 61-16.1. If, in the opinion of the board, more than one landowner or tenant has been responsible, the costs may be assessed on a pro rata basis in proportion to the responsibility of the landowners. A person aggrieved by action of the board under this section may appeal the decision of the board to the district court of the county in which the land is located in accordance with the procedure provided in section 28-34-01. A hearing as provided for in this section is not a prerequisite to an appeal. If, after the first complaint, in the opinion of the board, the complaint is frivolous, the board may assess the costs of the frivolous complaint against the complainant.

61-32-08. Appeal of board decisions - State engineer review - Closing of noncomplying drains. The board shall make the decision required by section 61-32-07 within a reasonable time, but not to exceed one hundred twenty days, after receiving the complaint. The board shall notify all parties of its decision by certified mail. The board's decision may be appealed to the state engineer by any aggrieved party. The appeal to the state engineer must be made within thirty days from the date notice of the board's decision has been received. The appeal must be made by submitting a written notice to the state engineer which must specifically set forth the reason why the board's decision is erroneous. The appealing party shall also submit copies of the written appeal notice to the board and to the nonappealing party. Upon receipt of this notice the board, if it has ordered closure of a drain, lateral drain, or ditch, is relieved of its obligation to procure the closing or filling of the drain, lateral drain, or ditch. The state engineer shall handle the appeal by conducting an independent investigation and making an independent determination of the matter. The state engineer may enter property affected by the complaint for the purpose of investigating the complaint.

If the board fails to investigate and make a determination concerning the complaint within a reasonable time, but not to exceed one hundred twenty days, the person filing the complaint may file such complaint with the state engineer. The state engineer shall, without reference to chapter 28-32, cause the investigation and determination to be made, either by action against the board, or by personally conducting the investigation and personally making the determination.

If the state engineer determines that a drain, lateral drain, or ditch has been opened or established by a landowner or tenant contrary to title 61 or any rules adopted by the board, the state engineer shall take one of three actions:

1. Notify the landowner by registered mail at the landowner's post-office address of record;
2. Return the matter to the jurisdiction of the board along with the investigation report; or
3. Forward the drainage complaint and investigation report to the state's attorney.

If the state engineer decides to notify the landowner, the notice must specify the nature and extent of the noncompliance and must state that if the drain, lateral drain, or ditch is not closed or filled within such reasonable time as the state engineer shall determine, but not less than thirty days, the state engineer shall procure the closing or filling of the drain, lateral drain, or ditch and assess the cost thereof, against the property of the landowner responsible. The notice from the state engineer must state that the affected landowner may, within fifteen days of the date the notice is mailed, demand, in writing, a hearing on the matter. Upon receipt of the demand, the state engineer shall set a hearing date within fifteen days from the date the demand is received. If, in the opinion of the state engineer, more than one landowner or tenant has been responsible, the costs may be assessed on a pro rata basis in proportion to the responsibility of the landowners. Upon assessment of costs, the state engineer shall certify the assessment to the county auditor of the county where the noncomplying drain, lateral drain, or ditch is located. The county auditor shall extend the assessment against the property assessed. Each assessment must be collected and paid as other taxes are collected and paid. Assessments

collected must be deposited with the state treasurer and are hereby appropriated out of the state treasury and must be credited to the contract fund established by section 61-02-64.1. Any person aggrieved by action of the state engineer under the provisions of this section may appeal the decision of the state engineer to the district court in accordance with chapter 28-32. A hearing by the state engineer as provided for in this section shall be a prerequisite to such an appeal.

If the state engineer, after completing the investigation required under this section, decides to return the matter to the board, a complete copy of the investigation report shall be forwarded to the board and it shall include the nature and extent of the noncompliance. Upon having the matter returned to its jurisdiction the board shall carry out the state engineer's decision in accordance with the terms of this section.

If the state engineer, after completing the investigation required under this section, decides to forward the drainage complaint to the state's attorney, a complete copy of the investigation report must also be forwarded, which must include the nature and extent of the noncompliance. The state's attorney shall prosecute the complaint in accordance with the statutory responsibilities prescribed in chapter 11-16.

In addition to the penalty imposed by the court in the event of conviction under this statute, the court shall order the drain, lateral drain, or ditch closed or filled within such reasonable time period as the court determines, but not less than thirty days. If the drain, lateral drain, or ditch is not closed or filled within the time prescribed by the court, the court shall procure the closing or filling of the drain, lateral drain, or ditch, and assess the cost thereof against the property of the landowner responsible, in the same manner as other assessments under chapter 61-16.1 are levied. If, in the opinion of the court, more than one landowner or tenant has been responsible, the costs may be assessed on a pro rata basis in proportion to the responsibility of the landowners.

The authority granted in this section may only be exercised for drainage constructed after January 1, 1987.

61-32-09. Wetlands replacement fund - Continuing appropriation. Repealed by S.L. 1995, ch. 599, § 3.

61-32-10. Exemption. The wetland replacement requirements of sections 61-32-01 through 61-32-11 do not apply to surface coal mining operations until reclamation of the wetland area begins pursuant to chapter 38-14.1.

61-32-11. Application of prior law. Repealed by S.L. 1995, ch. 599, § 3.

**CHAPTER 61-33
SOVEREIGN LAND MANAGEMENT**

	<u>Page</u>
<u>Section</u>	
61-33-01 Definitions	61-33: 1
61-33-02 Administration of sovereign lands	61-33: 1
61-33-03 Transfer of possessory interests in real property	61-33: 1
61-33-04 Existing contracts and encumbrances recognized	61-33: 1
61-33-05 Duties and powers of the state engineer	61-33: 1
61-33-06 Duties and powers of the board of university and school lands	61-33: 1
61-33-07 Deposit of income	61-33: 1
61-33-08 Advisory board - Responsibilities	61-33: 2
61-33-09 Members of the board - Organization - Meetings	61-33: 2
61-33-10 Penalty	61-33: 2

CHAPTER 61-33 SOVEREIGN LAND MANAGEMENT

61-33-01. Definitions. As used in this chapter, unless the context otherwise requires:

1. "Board" means the sovereign lands advisory board.
2. "Board of university and school lands" means that entity created by section 15-01-01.
3. "Sovereign lands" means those areas, including beds and islands, lying within the ordinary high watermark of navigable lakes and streams. Lands established to be riparian accretion or reliction lands pursuant to section 47-06-05 are considered to be above the ordinary high watermark and are not sovereign lands.
4. "State engineer" means the person appointed by the state water commission pursuant to section 61-03-01.

61-33-02. Administration of sovereign lands. All sovereign lands of the state must be administered by the state engineer and the board of university and school lands subject to the provisions of this chapter. Lands managed pursuant to this chapter are not subject to leasing provisions found elsewhere in this code.

61-33-03. Transfer of possessory interests in real property. All possessory interests now owned or that may be acquired except oil, gas, and related hydrocarbons, in the sovereign lands of the state owned or controlled by the state or any of its officers, departments, or the Bank of North Dakota, together with any future increments, are transferred to the state of North Dakota, acting by and through the state engineer. All such possessory interests in oil, gas, and related hydrocarbons in the sovereign lands of the state are transferred to the state of North Dakota, acting by and through the board of university and school lands. These transfers are self-executing. No evidence other than the provisions of this chapter is required to establish the fact of transfer of title to the state of North Dakota, acting by and through the state engineer and board of university and school lands. Proper and sufficient delivery of all title documents is conclusively presumed.

61-33-04. Existing contracts and encumbrances recognized. The transfers made by this chapter are subject to all existing contracts, rights, easements, and encumbrances made or sanctioned by the state or any of its officers or departments.

61-33-05. Duties and powers of the state engineer. The state engineer shall manage, operate, and supervise all properties transferred to it by this chapter; may enter into any agreements regarding such property; may enforce all rights of the owner in its own name; may issue and enforce administrative orders and recover the cost of the enforcement from the party against which enforcement is sought; and may make and execute all instruments of release or conveyance as may be required pursuant to agreements made with respect to such assets, whether such agreements were made heretofore, or are made hereafter. The state engineer may enter agreements with the game and fish department or other law enforcement entities to enforce this chapter and rules adopted under this chapter.

61-33-06. Duties and powers of the board of university and school lands. The board of university and school lands shall manage, operate, and supervise all properties transferred to it by this chapter; may enter into any agreements regarding such property; may enforce all subsurface rights of the owner in its own name; and may make and execute all instruments of release or conveyance as may be required pursuant to agreements made with respect to such assets, whether such agreements were made heretofore, or are made hereafter.

61-33-07. Deposit of income. All income derived from the lease and management of the lands acquired by the state engineer and board of university and school lands pursuant to this

chapter and not belonging to other trust funds must be deposited in the lands and minerals trust fund.

61-33-08. Advisory board - Responsibilities. There is created a sovereign lands advisory board. The board's responsibility is to advise the state engineer and the board of university and school lands on general policies as well as specific projects, programs, and uses regarding sovereign lands. The board, being solely advisory, has no authority to require the state engineer or the board of university and school lands to implement or otherwise accept the board's recommendations.

61-33-09. Members of the board - Organization - Meetings.

1. The board consists of the manager of the Garrison Diversion Conservancy District, the state engineer, the commissioner of university and school lands, the director of the parks and recreation department, the director of the game and fish department, and the state health officer, or their representative.
2. The state engineer is the board's secretary.
3. The board shall meet at least once a year or at the call of the state engineer or two or more members of the board. The board shall meet at the office of the state engineer or at any other place decided upon by the board.
4. The board may adopt rules to govern its activities.

61-33-10. Penalty. A person who violates this chapter or any rule implementing this chapter is guilty of a class B misdemeanor unless a lesser penalty is indicated. A civil penalty may be imposed by a court in a civil proceeding or by the state engineer through an adjudicative proceeding pursuant to chapter 28-32. The assessment of a civil penalty does not preclude the imposition of other sanctions authorized by law, this chapter, or rules adopted under this chapter. The state engineer may bring a civil action to recover damages resulting from violations and may also recover any costs incurred.

**CHAPTER 61-34
LIVESTOCK WATER ASSISTANCE PROGRAM**

<u>Section</u>		<u>Page</u>
61-34-01	Definitions	61-34: 1
61-34-02	Drought disaster livestock water assistance program – Administration	61-34: 1
61-34-03	Advisory committee	61-34: 1
61-34-04	Eligibility - Application for assistance	61-34: 1

CHAPTER 61-34

LIVESTOCK WATER ASSISTANCE PROGRAM

61-34-01. Definitions. In this chapter, unless the context otherwise requires:

1. "Commission" means the state water commission.
2. "Program" means the drought disaster livestock water assistance program.
3. "State engineer" means the state engineer appointed under section 61-03-01.

61-34-02. Drought disaster livestock water assistance program - Administration. The commission shall administer the program for the purpose of providing relief for livestock water supply problems caused by drought.

61-34-03. Advisory committee. The commission shall appoint an advisory committee of at least three members. The committee shall advise the commission in determining the criteria for eligibility, in defining expenses covered by the program, and in developing rules.

61-34-04. Eligibility - Application for assistance. Applicants with livestock water supply problems caused by drought may apply for assistance from the program. An applicant must first apply for water cost-share assistance from the United States department of agriculture farm service agency. If cost-share assistance is denied by the agency, the applicant may forward the application to the commission for consideration. An application forwarded to the commission must include a document from the United States department of agriculture farm service agency stating the reason for denial of cost-share assistance. The state engineer shall review all applications received by the commission. Notwithstanding any other provision of law, a water supply project commenced after application for funding is made but without prior approval of the state engineer is eligible for funding from the program. If the state engineer approves an application, the applicant may receive up to fifty percent of the cost but in no event more than three thousand five hundred dollars per project with a limit of three projects per applicant. The state engineer shall provide funds for approved applications in accordance with rules and criteria for eligibility and only to the extent that funding is available. A drought livestock water assistance program project located on Indian land is eligible for the program.

CHAPTER 61-35 WATER DISTRICTS

<u>Section</u>	<u>Page</u>
61-35-01 Definitions	61-35: 1
61-35-02 Petition	61-35: 2
61-35-02.1 Conversion of water resource district water supply system to water district	61-35: 2
61-35-03 Petition contents	61-35: 3
61-35-04 Hearing after filing	61-35: 3
61-35-05 Contents of notice	61-35: 3
61-35-06 Appearances	61-35: 3
61-35-07 Findings - Order	61-35: 3
61-35-08 Meeting of members - Election of board	61-35: 3
61-35-09 Bylaws submitted at special meeting	61-35: 4
61-35-10 Directors divided into classes - Terms - Vacancies	61-35: 4
61-35-11 Board meetings	61-35: 4
61-35-12 Powers of district board	61-35: 4
61-35-13 Contracts for construction or maintenance of a project	61-35: 7
61-35-14 Financing project through improvement bonds or special assessments - Apportionment of benefits	61-35: 7
61-35-15 Revenue bonds	61-35: 7
61-35-16 Plans and specifications	61-35: 7
61-35-17 Selling water	61-35: 7
61-35-18 Inclusion of property in district - Inclusion of municipality – Merger	61-35: 7
61-35-19 Taxing prohibited	61-35: 8
61-35-20 Exclusion of real property from district	61-35: 8
61-35-21 Inactive district dissolved	61-35: 8
61-35-22 Hearing	61-35: 8
61-35-23 Disposition of assets	61-35: 9
61-35-24 Not exempt from other requirements	61-35: 9
61-35-25 Alternate operation by nonprofit corporation or cooperative	61-35: 9
61-35-26 Annexation of land by a municipality	61-35: 10
61-35-27 Personal liability	61-35: 10
61-35-28 Proceedings to confirm contracts, special assessments, and other acts	61-35: 10
61-35-29 Authorization to organize association of rural water systems	61-35: 10
61-35-30 Resolution authorizing project and the issuance of revenue bonds	61-35: 10
61-35-31 Refunding bonds authorized by resolution - Adoption - Taking effect	61-35: 11
61-35-32 Cost of project - How determined	61-35: 11
61-35-33 Provisions governing bonds	61-35: 11
61-35-34 Sale of bonds - When private sale authorized - Public sale and notice	61-35: 11

61-35-35	Bonds and receipts or certificates issued pending preparation of bonds - Negotiability	61-35: 11
61-35-36	Validity of bonds	61-35: 12
61-35-37	Bonds exempt from taxation	61-35: 12
61-35-38	Covenants that may be inserted in resolution authorizing bonds	61-35: 12
61-35-39	Liability of district for bonds - Taxing power prohibited - Bond not a lien	61-35: 13
61-35-40	Duties of district and officers	61-35: 13
61-35-41	Remedies of bondholders in general	61-35: 14
61-35-42	Receiver of project - When appointed	61-35: 14
61-35-43	Powers and duties of receiver of project	61-35: 15
61-35-44	Court may direct receiver to surrender possession of project	61-35: 15
61-35-45	Receiver subject to jurisdiction of court - Jurisdiction of court	61-35: 15
61-35-46	Construction	61-35: 15
61-35-47	Limitations on authorization contained in chapter - Effect of chapter on bonds issued before August 1, 1995	61-35: 15
61-35-48	Power of district to defray expense of improvements by special assessments	61-35: 16
61-35-49	Waterworks and water mains - Acquisition of waterworks, sewage treatment and disposal plants and sewer systems	61-35: 16
61-35-50	Acquiring property for sewers, water mains, and water supply beyond district limits	61-35: 16
61-35-51	Condemnation of land and rights of way for special improvements - Taking of possession - Trial - Appeal - Vacation of judgment	61-35: 16
61-35-52	Improvement districts to be created	61-35: 17
61-35-53	Size and form of improvement districts - Regulations governing	61-35: 17
61-35-54	Engineer's report required - Contents	61-35: 17
61-35-55	Approval of plans, specifications, and estimates	61-35: 18
61-35-56	District engineer to retain copy of plans, specifications, and estimates - Sale of copies	61-35: 18
61-35-57	Plans, specifications, and estimates filed in office of district	61-35: 18
61-35-58	Hearing - Notice - Contents	61-35: 18
61-35-59	Voting on proposed projects	61-35: 18
61-35-60	Voting right or powers of landowners	61-35: 19
61-35-61	Assessment of cost of project	61-35: 19
61-35-62	Assessment list to be published - Notice of hearing - Alteration of assessments - Confirmation of assessment list - Filing	61-35: 20
61-35-63	Appeal to state engineer	61-35: 20
61-35-64	When assessments may be made	61-35: 20
61-35-65	Reassessment of benefits	61-35: 20
61-35-66	Correction of errors and mistakes in special assessments - Requirements governing	61-35: 21
61-35-67	Lien of special assessment	61-35: 21
61-35-68	Sewer or water improvements in districts may be paid for by service charges	61-35: 21

61-35-69	Abbreviations, letters, or figures may be used in proceedings for levy and collection of special assessments	61-35: 22
61-35-70	District office to keep complete record of improvements - Record as evidence	61-35: 22
61-35-71	Defects and irregularities in improvement proceedings are not fatal	61-35: 22
61-35-72	Payment of special assessments - Interest	61-35: 22
61-35-73	Lien between vendor and vendee of special assessments	61-35: 22
61-35-74	Sewer special assessments extended over a period of not more than thirty years	61-35: 22
61-35-75	Water main and waterworks special assessments extended over a period of not more than thirty years	61-35: 22
61-35-76	Payments in full of assessments - Payments to county treasurer or district treasurer - Receipts	61-35: 22
61-35-77	Certification of assessments to county auditor	61-35: 23
61-35-78	District treasurer to insert amount of improvements in county real estate book or other forms - Regulations governing	61-35: 23
61-35-79	Extension of special assessments on tax lists - Collection - Payment over to district	61-35: 23
61-35-80	Special assessment record book kept by county auditor - Assessments certified for more than one year	61-35: 24
61-35-81	County treasurer to certify and receipt for amount of special assessments collected - Contents of certificate - Procedure for abatement	61-35: 24
61-35-82	Interest and penalties added to special assessments - County treasurer to collect and pay over	61-35: 24
61-35-83	Special improvement moneys to be kept separate - Designation and numbering of funds - Diversion of moneys prohibited	61-35: 24
61-35-84	Bonds - When payable - Amounts - Interest	61-35: 24
61-35-85	Bonds may be used in making payments on contract - Bonds payable out of fund on which drawn - May be used to pay special assessments	61-35: 25
61-35-86	Refunding special assessment bonds - Purposes for which such bonds may be issued - Payment of bonds	61-35: 25
61-35-87	Foreclosure of tax lien on property when general and special assessment taxes are delinquent	61-35: 25
61-35-88	Call for bids - Contents - Advertising	61-35: 25
61-35-89	Bid to be accompanied by a bond - Bond retained upon failure of bidder to contract - Amount of bond	61-35: 26
61-35-90	Execution of bidder's bond	61-35: 26
61-35-91	Conditions of bidder's bond	61-35: 26
61-35-92	Bids - Filing - Sealing - Endorsing - Opening - Considering	61-35: 26
61-35-93	Opening of bids - Bids to be entered on minutes	61-35: 26
61-35-94	Rejection of bids - Readvertising for bids or construction by district without contract - Reevaluation of project	61-35: 26

61-35-95	Engineer's statement of estimated cost required - Board to enter into contracts	61-35: 27
61-35-96	Contractor's bond - Execution	61-35: 27
61-35-97	Conditions for contractor's bond	61-35: 27
61-35-98	Approval of bonds - Return of bidder's bond	61-35: 27
61-35-99	Failure to execute contractor's bond	61-35: 27
61-35-100	Insufficiency of bonds - New bonds required - Failure to furnish ..	61-35: 28
61-35-101	Execution and filing of contract	61-35: 28
61-35-102	Conditions and terms	61-35: 28
61-35-103	Contractor to be paid during progress of work -- Retainage - Failure to pay -- Rate of interest -- Investment of retainage	61-35: 28

CHAPTER 61-35 WATER DISTRICTS

61-35-01. Definitions. As used in this chapter:

1. "Auditor" means the county auditor.
2. "Benefit unit" means the fee each member pays, for each service that is planned to be connected to the water system, for the privilege of using the district's facilities.
3. "Board" means the board of directors of a district.
4. "Bond" means any revenue bond, refunding bond, or improvement bond, or other evidence of indebtedness of a district issued under this chapter.
5. "Director" means a member of the board of directors.
6. "District" means a water district organized under this chapter.
7. "Federal agency" includes the United States of America, the president of the United States, or any agency, instrumentality, or corporation of the United States of America which has been or may be designated or created by or pursuant to any act or acts or joint resolutions of the Congress of the United States of America or which may be owned or controlled, directly or indirectly, by the United States of America.
8. "Holder of bonds" or "bondholder", or any similar term, means any person who is the registered owner of any outstanding revenue bond, improvement bond, or refunding bonds.
9. "Law" means any statute of this state.
10. "Member" means an owner of real property that is located within a district, the tenant of the real property, or another person acting for the owner with the owner's written consent.
11. "Participating member" means a member who has subscribed to and paid the established fee for at least one benefit unit in a district, in the manner provided by this chapter.
12. "Project" means any work, undertaking, enterprise, or any combination of two or more projects which a district is authorized to construct and from which the district has derived or may derive revenues. "Project" includes all improvements, betterments, extensions, and replacements of work, undertaking, or enterprises, and all appurtenances, facilities, easements, lands, rights in land, water rights, contract rights, approaches, dams, reservoirs, generating stations, sewage disposal plants, intercepting sewers, trunk connections, other sewer and water mains, filtration works, pumping stations, equipment, franchises, and structures in connection with or incidental to any work, undertaking, or enterprise a district is authorized to construct.
13. "Refinancing" means funding, refunding, paying, or discharging, by means of refunding bonds or the proceeds from the sale of refunding bonds, all or any part of any notes, bonds, or other obligations issued to finance or to aid in financing the acquisition, construction, or improvement of a project and payable solely from all or any part of the revenue or interest on the revenue of the project in arrears or about to become due whether or not such interest is represented by interest certificates.

14. "Refunding bonds" means notes, bonds, certificates, or other obligations of a district issued under this chapter, the proceeds of which are to be used to pay the principal of or interest on any outstanding bonds or other obligations.
15. "Revenues" means all fees, tolls, rates, rentals, and charges levied and collected by a district in connection with, and all other income and receipts of whatever kind or character derived by a district from, the operation of any project.
16. "State engineer" has the same meaning as provided in chapter 61-03.
17. "Warrant" means an order drawn by the proper official of a district on its treasury, the warrant of order to be so drawn that when signed by the district treasurer in an appropriate place it becomes a check on the depository of such district, and a warrant upon the treasury may not be delivered or mailed to the payee or the payee's agent or representative until the warrant has been signed by the district treasurer and entered on the district's books as a check drawn on a bank depository.

61-35-02. Petition. A petition may at any time be filed with the state engineer requesting the state engineer to organize a district encompassing an area in one county or in two or more adjacent counties for the purpose of providing an adequate supply of water for the residents of the area. An area to be included in a district may not include property then included in any other district or included in the service area of a nonprofit corporation or cooperative association established under title 10 to operate a rural water system, except as otherwise permitted under section 61-35-25.

61-35-02.1. Conversion of water resource district water supply system to water district. A water resource district that has developed a water supply system under chapter 61-16.1 may convert that system to a water district as provided in this section. The water resource district board operating a water supply system may petition the state engineer to organize a district in the manner provided by section 61-35-02. The signatures of the water resource district's board of directors on the petition and a resolution adopted by the water supply system's users approving the petition suffice in lieu of signatures of owners of fifty percent of the real property in the proposed district, if the petition presenter provides evidence satisfactory to the state engineer that a sufficient number of members of the proposed district will subscribe or have subscribed to benefit units to make its operation feasible. The procedure for hearing and determination of disposition of the petition is as provided by this chapter. In any district organized upon the petition of a water resource board of directors, the following procedures apply:

1. After final approval of the petition by the state engineer, the secretary of the water resource board shall file a notice with the secretary of state.
2. Upon filing of the notice, the assets and liabilities of the water supply system become the assets and liabilities of the newly organized district without any further meetings, voting, notice to creditors, or other actions by the members of the board.
3. The officers and board of directors of the water resource district are the officers and board of the district.
4. The applicable laws of the state governing the water resource district board control the initial size and the initial terms of office of officers and the board, in lieu of sections 61-35-08 through 61-35-11.
5. The district shall bring its operation and structure into compliance with the requirements of section 61-35-08 regarding the number and qualification of directors, section 61-35-09 regarding new bylaws, section 61-35-10 regarding dividing its directors into classes, and section 61-35-11 regarding board meetings at the first annual meeting of the participating members and board. The new district has all the rights and all the property of the original water supply system and is

responsible for all its obligations. Title to any property is vested in the new district with no reversion or impairment of ownership rights caused by the conversion to a district. A water supply agreement entered by a water resource district is binding for its term on a successor district organized by the water resource district, unless otherwise agreed in writing by all parties to the agreement. The right of any creditor may not be impaired by this section without the creditor's consent.

61-35-03. Petition contents. The petition must be signed by the owners of at least fifty percent of all real property lying within the outside perimeter of the area designated for inclusion in the proposed district and must state:

1. The location of the area, describing the area to be served or specifying the area by an attached map.
2. The reasons a district is needed.

61-35-04. Hearing after filing. When a petition for the organization of a district is filed with the state engineer, the state engineer shall fix a time for a hearing on the petition not less than fifteen nor more than forty-five days after the filing of the petition. The state engineer shall prepare a notice as required by section 61-35-05. At least seven days before the date fixed for the hearing on the petition, the notice must be published in the official county newspapers in the counties included within the district. The applicant shall pay all costs of the publication notice.

61-35-05. Contents of notice. The notice prepared by the state engineer must set forth:

1. The location of the area designated by the petitioners to be included in the proposed district, as described or shown by the original petition.
2. The time and place fixed by the state engineer for the hearing on the petition.
3. That all owners or tenants of real property or other interested persons within the boundaries described may appear and be heard.
4. That the proposed district, if organized, has no power or authority to levy any taxes.

61-35-06. Appearances. At the hearing on the petition, any owner or tenant of real property or other interested person within the boundaries of the area described in the petition may appear, in person or by a designated representative, and any representative of the state or a political subdivision or an interested person may appear, in favor of or in opposition to the organization of the proposed district. The appearances may also be filed in writing before the time set for the hearing.

61-35-07. Findings - Order. After the hearing, the state engineer may strike off any part of the territory that testimony shows will not be benefited by the creation of the district. If the state engineer does not find that the district is reasonably necessary, the state engineer shall dismiss the petition. If the state engineer finds that required notice of the hearing has been given and that the proposed district is reasonably necessary for the public health, convenience, and comfort of the residents, the state engineer shall make an order establishing the district as a political subdivision, designating its boundary, and identifying it by name or number. The order shall be published in the same newspaper or newspapers that published the notice of hearing. The applicant shall pay all costs of the publication of the order. The state engineer shall prepare and preserve a complete record of the hearing on the petition and the state engineer's findings and action.

61-35-08. Meeting of members - Election of board. As a part of the order organizing the district, the state engineer shall fix the time and place at which the members shall meet to select from their number a board of directors. Selection of the initial board may not be later than thirty days after the order is issued. The number of directors on the board, not to exceed nine, must be determined by a majority vote of those members present. Any member elected a

director who fails to become a participating member, within thirty days after entry in the minutes of the board of a declaration of availability of benefit units for subscription, forfeits the office of director.

61-35-09. Bylaws submitted at special meeting. Within thirty days after election of the original board, proposed bylaws must be submitted for adoption at a special meeting of members of the district, written notice of which must be mailed to each member. Members present at the special meeting may adopt or amend any of the proposed bylaws, and may propose and adopt alternative or additional bylaws by a majority vote. The bylaws may subsequently be amended at any annual or special meeting of the participating members of the district. However, the bylaws of each district must provide:

1. For an annual meeting of participating members each year after the year of organization of the district and for mailing of written notice of the time and place of each annual meeting to each participating member and publication of the notice in the official newspaper of the county or counties served by the district not less than ten nor more than thirty days before each meeting.
2. That each participating member of the district is entitled to one vote at all annual and special meetings of the district for each benefit unit to which the member has subscribed.

61-35-10. Directors divided into classes - Terms - Vacancies. The initial board of each district shall divide its members by lot into three classes of as nearly equal size as possible. The terms of the directors in the first, second, and third classes expire on dates of the annual meetings in the first, second, and third years, respectively, following the year in which the district is organized, or as soon thereafter as their successors are elected and have qualified. At the annual meeting in each year after the year in which the district is organized, a director must be elected to succeed each director whose term of office expires on that date, and each director so elected holds office for a term of three years and until a successor is elected and has qualified. Vacancies must be filled for the unexpired term by appointment by the remaining directors.

61-35-11. Board meetings. The board shall meet annually on the same day as, and immediately following, the annual meeting of participating members, and may meet at other times it determines, or upon the call of the president or any two directors. At the first meeting of the initial board following its election, and at each succeeding annual board meeting, the board shall elect a president, vice president, secretary, and treasurer for the ensuing year. Board members are entitled to reasonable compensation to cover the expenses of serving on the board.

61-35-12. Powers of district board. Each district board has the power to:

1. Sue and be sued in the name of the district.
2. Exercise the power of eminent domain in the manner provided by title 32 for the purpose of acquiring and securing any rights, titles, interests, estates, or easements necessary or proper to carry out the duties imposed by this chapter, and particularly to acquire the necessary rights in land for the construction of pipelines, reservoirs, connections, valves, pumping installations, or other facilities for the storage, transportation, or utilization of water and all other appurtenant facilities necessary to carry out the purposes of its organization.
3. Accept funds, property, and services or other assistance, financial or otherwise, from federal, state, and other public or private sources for the purpose of aiding and promoting the construction, maintenance, and operation of projects within the district.

4. Cooperate and contract with the state, its agencies, or its political subdivisions or any federal agency in research and investigation or other activities promoting the establishment, construction, development, or operation of projects within the district.
5. Furnish assurances of cooperation, and as principal and guarantor, or either, to enter into contracts with any federal agency, and with public corporations and political subdivisions of this state for the performance of obligations for the construction, operation, or maintenance of the district or for the delivery of water to any such department, agency, or political subdivision.
6. Construct, lease, or purchase separately or in cooperation with any federal agency or the state, its agencies, or political subdivisions, and to equip, maintain, and operate an office and principal place of business for the district, or other buildings or facilities to carry out activities authorized by this chapter.
7. Appoint and fix the compensation and reimbursement of expenses of such employees as the board deems necessary to conduct the business and affairs of the district and to procure the services of engineers and other technical experts, and to retain attorneys to assist, advise, and act for it in its proceedings.
8. Sell or exchange any and all real property purchased or acquired by the district. All money received from any such sale or exchange must be deposited to the credit of the district and may be used to pay expenses of the district.
9. Borrow money as provided in this chapter.
10. Issue and sell bonds in an amount or amounts determined by the board, including an amount or amounts for costs of issuance and financing, and any necessary reserve funds, for the purpose of financing the cost of a project.
11. Refund and refinance its bonds from time to time as often as it is advantageous and in the interest of the district.
12. Pledge any and all income, profits, and revenues received by the district in connection with the operation, lease, sale, or other disposition of all or any part of a project to secure the payment of bonds issued and sold to finance the project.
13. Pledge all or any part of any assessments levied under this chapter to secure the payment or redemption of any bonds issued in anticipation of the levy and collection of the assessments.
14. Acquire by gift, purchase, or the exercise of the right of eminent domain, property required to construct, reconstruct, improve, better, or extend any project, whether completely or partially within or outside the district, and easements, rights in lands, and water rights in connection with the project.
15. Operate and maintain any project for its own use and for the use of public and private consumers and users within and without the territorial boundaries of the district.
16. Prescribe, revise, and collect rates, fees, tolls, or charges for the services, facilities, or commodities furnished by the project, and in anticipation of the collection of the revenues of the project, issue revenue bonds to finance all or part of the cost of the acquisition, construction, reconstruction, improvement, betterment, or extension of any project.
17. Pledge revenues of the project to the punctual payment of principal and interest on bonds. A pledge under this subsection applies to the revenues of improvements, betterments, or extensions of the project which may be constructed or acquired after

the issuance of bonds as well as the revenues of existing systems, plants, works, instrumentalities, and properties of any part of the project improved, bettered, or extended.

18. Make all contracts, execute all instruments, and do all things necessary or convenient in the exercise of its powers or in the performance of its covenants or duties or in order to secure the payment of its bonds, but an encumbrance, mortgage, or other pledge of property of the district may not be created by any such contract or instrument.
19. Enter into and perform long-term or short-term contracts with any nongovernmental unit for the provision and operation by the district of sewerage facilities, when the board of the district determines such action to be in the public interest and necessary for the protection of the public health, in order to abate or reduce the pollution of waters caused by discharges of industrial wastes by the nongovernmental unit, and for the payment periodically by the nongovernmental unit to the district of amounts the board deems sufficient to compensate the district for all costs associated with providing, operating, and maintaining the sewerage facilities serving the nongovernmental unit.
20. Enter into and perform such contracts and agreements with other districts, political subdivisions, and state institutions as the board deems proper and feasible concerning the planning, construction, lease, or other acquisition and the financing, maintenance, and operation of sewerage facilities. Any districts contracting with each other may provide in any contract or agreement for a board, commission, or such other body as their boards deem proper to supervise, manage, and operate the sewerage facilities and may prescribe its powers and duties and compensation of its members.
21. Accept from any authorized federal agency loans or grants for the planning, construction, acquisition, lease, or other provision of any project, and to enter into agreements with such agency respecting such loan or grants.
22. Contract debts and borrow money, pledge property of the district for repayment of indebtedness other than bonded indebtedness, and provide for payment of debts and expenses of the district.
23. Notwithstanding any other law, exercise the powers granted to a municipality under subsection 5 of section 40-33-01 and section 40-34-19, pursuant to the limitations set forth therein. A district may pay the cost of leasing any waterworks, mains, and water distribution system and any equipment or appliances connected therewith and any property related thereto pursuant to subsection 5 of section 40-33-01, or of any sewage system and all related property for the collection, treatment, purification, and disposal in a sanitary manner of sewage pursuant to section 40-34-19, solely from revenues to be derived by the district from the ownership, sale, lease disposition, and operation of the waterworks, mains, and water distribution system or sewage system; the funds or any other amounts invested by such district pursuant to section 21-06-07, or invested on such district's behalf by the state, or any agency or institution of the state, in conformity with policies of the industrial commission, including investment in a guaranteed investment contract and any earnings thereon, to the extent pledged therefor; and funds, if any, appropriated annually by the board of the district or received from federal or state sources.
24. Enter and perform long-term and short-term contracts for the purchase or sale of water and to pledge any and all income, profits, and revenues received by the district to secure payment of the district's obligations created by the contracts.

Property of the district may not be liable to be forfeited or taken in payment of any bonds issued under this chapter, and debt on the general credit of the district may not be incurred in any manner for payment of bonds under this chapter.

61-35-13. Contracts for construction or maintenance of a project. If the cost of construction or maintenance of a project does not exceed the amount provided for construction of a public improvement under section 48-01.2-02, the work may be done on a day work basis or a contract may be let without being advertised. If the cost of the construction or maintenance exceeds the amount provided for construction of a public improvement under section 48-01.2-02, the lowest and best bid must be accepted. The board must comply with the requirements of sections 61-35-88 through 61-35-103 when bidding a project.

The competitive bid requirement of this section may be waived if the board determines that an emergency exists requiring the prompt repair of a project and a contract may be made for the prompt repair of the project without seeking bids.

61-35-14. Financing project through improvement bonds or special assessments - Apportionment of benefits. A board may acquire needed interest in property and provide for the cost of construction, alteration, repair, operation, and maintenance of a project with funds raised by special assessments. A board may issue improvement bonds in anticipation of the levy and collection of special assessments. If a board decides to acquire property or interests in property to construct, operate, alter, repair, or maintain a project with funds raised in whole or in part through special assessments, the assessments must be apportioned to and spread in proportion to benefits accruing to lands or premises benefited by the project. The board shall assess the proportion of the cost of the project, or the part of the cost to be financed with funds raised through levy and collection of special assessments which any lot, piece, or parcel of land bears in proportion to the benefits accruing to the property and any county, city, or township that is benefited.

61-35-15. Revenue bonds. A district may issue revenue bonds, not exceeding an aggregate total outstanding of fifty million dollars, to finance construction of projects and incidental facilities authorized by this chapter. Issuance of revenue bonds must be approved by two-thirds of all of the members of the district board. The district shall pledge sufficient revenue from any revenue-producing facility constructed with the aid of revenue bonds for the payment of principal and interest on the bonds and shall establish rates for the facilities at a sufficient level to provide for the operation of such facilities and for the bond payments. Revenue bonds may not be a general obligation of any political subdivision and may not be secured by property taxes.

61-35-16. Plans and specifications. As soon as reasonably possible after organizing a district, the board shall file with the state engineer copies of the plans and specifications for, and estimates of the cost of, any improvements authorized by this chapter which the board proposes to construct or acquire. The board shall determine a reasonable fee that each member shall pay for the privilege of utilizing the district's facilities, which shall be known as a benefit unit. By publication in the official county newspaper of each county in which all or part of the district is located, the board shall generally describe the planned improvements, the area to be served, and the fee members will be required to pay for each service connected to the water system.

61-35-17. Selling water. If the capacity of the district's facilities permits, the district may sell water by contract to any political subdivision, other district, or other person, public or private, not within the boundaries of the district.

61-35-18. Inclusion of property in district - Inclusion of municipality - Merger.

1. Owners of real property outside any district which can economically be served by the facilities of the district may petition to be attached to the district. The petition must be filed with the state engineer and the state engineer shall proceed in substantially the same manner as is provided by this chapter for filing of and proceeding on a petition for organization of a district.

2. All or part of an incorporated city may be included in the boundaries of any existing district or a district being newly organized, provided the governing body of the city by resolution or ordinance gives its consent.
3. Boards of two or more districts by concurrent action and by approval of the state engineer may merge their districts into one. In case of merger the members of the boards of the merged districts may serve until the next annual meeting at which time the district shall comply with the requirements of section 61-35-08 regarding the number and eligibility of directors, adopt new bylaws, and set the terms of the new board according to section 61-35-10. The resulting district shall take over all the assets and legal liabilities of the districts joining in the merger. Obligations of any district secured by the revenue of the systems operated by the district must continue to be required, or a sinking fund must be established for that purpose created from revenue from the system operated over the same area by the resulting district in accordance with the laws under which the obligations were issued, until all obligations of the old district have been retired.
4. If there is a conflict between two or more districts concerning which district will serve an area, the state engineer, after a public hearing, shall determine which district can more adequately and economically provide service within the area.

61-35-19. Taxing prohibited. A district has no power to levy any taxes. The facilities constructed or otherwise acquired by any district, including ponds, reservoirs, pipelines, wells, deck dams, and pumping installations, the revenues obtained by the district from the sale of water, and the revenue bonds or interest on the revenue bonds issued by any district are not taxable in any manner by the state or a political subdivision.

61-35-20. Exclusion of real property from district. If it becomes apparent that any real property included within a district but contiguous to a border cannot economically or adequately be served by the facilities of the district, the owners of the real property or the board may file with the state engineer a petition to the state engineer requesting that the real property be excluded from the district. The petition must:

1. Describe by full and partial section and by township and range, or by lot number and subdivision, as the case may be, the real property that it is proposed to exclude from the district.
2. State that the real property cannot economically or adequately be served by the facilities of the district and that it is not feasible for the district to enlarge or extend its facilities to economically and adequately serve the real property.
3. Be signed by the owners of all the real property that it is desired to exclude from the district or by all of the board.

61-35-21. Inactive district dissolved. A petition may be filed with the state engineer requesting the state engineer to dissolve an inactive district. The petition must:

1. List all real and personal property of any kind exclusive of records, maps, plans, and files and state that all of its debts and obligations have been fully paid.
2. State that the district is not functioning and will probably continue to be inoperative.
3. Be signed by three-fourths of the members of the district.

61-35-22. Hearing. Upon the filing with the state engineer of a petition under section 61-35-20 or 61-35-21, the state engineer shall fix a time for consideration of the petition. The state engineer may hold a hearing on the petition. After consideration of the petition, and after the hearing if one is held, the state engineer shall ascertain whether:

1. The petition meets all of the requirements prescribed by section 61-35-20 or 61-35-21.
2. It appears from all information available to the state engineer that each allegation included in the petition is factual.

If the state engineer's finding on each of the foregoing points is positive, the state engineer shall declare the real property described in the petition detached from the district or declare the district dissolved, as the case may be. The state engineer shall notify the secretary of the district of the state engineer's action and the secretary shall amend the records of the district to show that the real property described in the petition has been detached from the district. Within thirty days, the secretary shall deliver to the state engineer all records, maps, plans, and files of the dissolved district.

61-35-23. Disposition of assets. If a district is dissolved the state engineer shall provide for the disposition of any property owned by the district and for the apportionment of the proceeds and any other moneys belonging to the district to an adjoining district. If there is no adjoining district the state engineer shall apportion and dispose of the property and proceeds to the general fund of each county in the district in proportion to their area in the district. Any pledge or lien given with respect to any outstanding bonds of the district remains and any property so encumbered must be handled in conformity with the bond resolution or trust indenture. Money, property, or the proceeds from property may not be distributed to any private interests.

61-35-24. Not exempt from other requirements. This chapter does not exempt any district from the requirements of any other statute, whether enacted before or after August 1, 1995, under which the district is required to obtain the permission or approval of, or to notify, the water commission, or the state department of health, or any other agency of this state or of any of its political subdivisions before proceeding with construction, acquisition, operation, enlargement, extension, or alteration of any works or facilities that the district is authorized to undertake under this chapter.

61-35-25. Alternate operation by nonprofit corporation or cooperative. A nonprofit corporation or cooperative association established under title 10 for the specific purpose of operating a rural water system may petition the state engineer to organize a district, in the manner provided by section 61-35-02. The signatures of the corporation's or cooperative's officers on the petition and a resolution adopted by the members in the manner provided in section 10-15-37 for amendments to articles or in the manner provided in chapter 10-33 for dissolution, as the case may be, approving the petition suffice in lieu of signatures of owners of fifty percent of the real property in the proposed district, if the petition presenter provides evidence satisfactory to the state engineer that a sufficient number of members of the proposed district will subscribe or have subscribed to benefit units to make its operation feasible. The procedure for hearing and determination of disposition of the petition is as provided by this chapter. In any district organized upon the petition of a nonprofit corporation or cooperative association, the following procedures apply:

1. After final approval of the petition by the state engineer, the secretary of the corporation or cooperative shall file a notice with the secretary of state or attorney general, if applicable, in accordance with title 10.
2. Upon filing of the notice, the nonprofit corporation or cooperative ceases to exist as a title 10 entity and all assets and liabilities of the nonprofit corporation or cooperative become the assets and liabilities of the newly organized district without any further meetings, voting, notice to creditors, or other actions by the members of the board.
3. The officers and board of directors of the corporation or cooperative are the officers and board of the district.

4. The applicable laws of the state and the articles of incorporation and bylaws of the corporation or cooperative control the initial size and initial term of office of officers and the board, in lieu of sections 61-35-08 through 61-35-11.
5. The district shall bring its operation and structure into compliance with the requirements of section 61-35-08 regarding the number and qualification of directors, section 61-35-09 regarding new bylaws, section 61-35-10 regarding dividing its directors into classes, and section 61-35-11 regarding board meetings at the first annual meeting of the participating members and board. The new district has all the rights and all the property of the original corporation or cooperative and is responsible for all its obligations. Title to any property is vested in the new district with no reversion or impairment of ownership rights caused by the conversion to a district. A water supply agreement entered by a nonprofit corporation or cooperative association is binding for its term on a successor district organized by the nonprofit corporation or cooperative association, unless otherwise agreed in writing by all parties to the agreement. The right of any creditor may not be impaired by this section without the creditor's consent.

61-35-26. Annexation of land by a municipality. A district organized under this title or title 10 must be fairly compensated for losses resulting from annexation by a city under chapter 40-51.2. If a district has outstanding bonds the annexation proceedings must be in accordance with the bond resolution or trust indenture. The governing body of a city and the board of directors of the district may agree to terms that provide that the facilities owned by the district and located within the city must be retained by the district for the purpose of transporting water to customers outside the municipality.

61-35-27. Personal liability. Except as otherwise provided in this chapter, a director, officer, employee, or other personnel of the board are not liable for the district's debts or obligations and a director, officer, employee, or volunteer of the board is not personally liable in that capacity for a claim based upon an act or omission of the person in the discharge of the person's duties, except for any of the following:

1. A breach of the duty of loyalty to the district.
2. Acts or omissions not in good faith or which involve intentional misconduct or knowing violation of the law.
3. A transaction from which the person derives an improper personal benefit.

61-35-28. Proceedings to confirm contracts, special assessments, and other acts. Any district board, before making any contract, levying special assessments, or issuing special assessment improvement bonds or revenue bonds, or before taking any special action, may commence a special proceeding in district court by which the proceeding leading up to the making of such contract, levying special assessments, issuing improvement bonds or revenue bonds, or leading up to any other special action, may be judicially examined, approved, and confirmed. Such judicial proceedings must substantially comply with the procedure required in the case of judicial confirmation of proceedings, acts, and contracts of an irrigation district.

61-35-29. Authorization to organize association of rural water systems. A district, upon resolution of the district board, may organize and participate in an association of rural water systems organized under chapter 10-33.

61-35-30. Resolution authorizing project and the issuance of revenue bonds. The acquisition, construction, reconstruction, improvement, betterment, or extension of any project and the issuance of bonds in anticipation of the collection of the revenues of such project to provide funds to pay the associated costs may be authorized by a resolution of the board adopted after appropriate notice by the affirmative vote of a majority of the board. The amount of such bonds may not exceed the amount authorized by the participating members of the district

as provided in this chapter. Unless otherwise provided in the resolution, the resolution under this section takes effect immediately and need not be laid over, published, or posted.

61-35-31. Refunding bonds authorized by resolution - Adoption - Taking effect. Refunding bonds must be authorized by resolution of the board. The resolution may be adopted at a regular or special meeting, including the meeting at which it is introduced, by the affirmative vote of a majority of the members of the board, and takes effect immediately upon adoption. Other proceedings or procedure are not required for the issuance of refunding bonds by the district.

61-35-32. Cost of project - How determined. In determining the cost of a project, the board may include the estimated cost of bond issuance, all engineering, inspection, fiscal, and legal expenses, any bond reserves, and the estimated interest that will accrue during construction, and within six months after completion of construction.

61-35-33. Provisions governing bonds. The resolution authorizing the issuance of revenue bonds or refunding bonds under this chapter or resolutions adopted after the adoption of the original resolution must prescribe:

1. The rate or rates of interest, payable semiannually.
2. Whether the bonds will be in one or more series.
3. The date or dates the bonds will bear.
4. The time or times, not exceeding forty years from their respective dates, when the bonds will mature.
5. The medium in which the bonds will be payable.
6. The place or places where the bonds will be payable.
7. Whether or not the bonds will carry registration privileges and what those privileges, if any, will be.
8. The terms of redemption, if any, to which the bonds will be subject.
9. The manner in which the bonds will be executed.
10. The terms, covenants, and conditions that the bonds will contain.
11. The form in which the bonds will be issued.

61-35-34. Sale of bonds - When private sale authorized - Public sale and notice. Revenue bonds or refunding bonds must be sold at not less than ninety-eight percent of par. The bonds may be sold at private sale without notice or at public sale after notice of the sale has been published once at least five days before the sale in a newspaper circulating in the district. Bonds sold at private sale must bear interest at a rate and be sold at a price resulting in an average net interest cost not exceeding twelve percent per annum. There is no interest rate ceiling on issues sold at public sale or to the state or any of its agencies or instrumentalities. As to any series or issue of bonds for which a notice of sale was published but for which no bids were received or all bids received were rejected, the board, without readvertising the bonds for sale, may negotiate the sale of all of the bonds to any person upon terms complying with those specified in the published notice of sale and, if bids were rejected, more favorable to the district than those specified in the rejected bid.

61-35-35. Bonds and receipts or certificates issued pending preparation of bonds - Negotiability. Pending the preparation of the definitive bonds, bond anticipation notes may be issued and sold in the form and with the provisions determined by the board.

61-35-36. Validity of bonds. Revenue bonds or refunding bonds bearing the signatures of the appropriate officers who are in office on the date of signing are valid and binding obligations notwithstanding that before the delivery and payment any or all of the persons whose signatures appear on the bonds have ceased to be officers of the issuing district. The validity of the bonds is not dependent upon or affected by the validity or regularity of any proceedings relating to the acquisition, purchase, construction, reconstruction, improvement, betterment, or extension of the project for which the bonds are issued. The resolution authorizing the bonds may provide that the bonds must contain a recital that they are issued under this chapter and the recital is conclusive evidence of their validity and of the regularity of their issuance.

61-35-37. Bonds exempt from taxation. Bonds issued under this chapter and their income are exempt from taxation by the state or by any political subdivision.

61-35-38. Covenants that may be inserted in resolution authorizing bonds. Any resolution authorizing the issuance of bonds under this chapter to completely or partially finance or refinance the acquisition, construction, reconstruction, improvement, betterment, or extension of a project may contain covenants that limit the exercise of powers conferred by this chapter as to:

1. The rates, fees, tolls, or charges to be charged for the services, facilities, and commodities of the project.
2. The use and disposition of the revenues of the project.
3. The creation, maintenance, regulation, use, and disposition of reserves or sinking funds.
4. The purpose to which the proceeds of the sale of bonds may be applied and the use and disposition of the proceeds.
5. The events of default and the rights and liabilities arising upon default and the terms and conditions upon which the holders of bonds issued under this chapter may bring any suit or action on said bonds.
6. The payment by the district to the account of the project of a fair and reasonable amount for the services, facilities, or commodities furnished the district or any of its departments by the project.
7. The issuance of other or additional bonds or instruments payable from or constituting a charge against the revenue of the project.
8. The insurance to be carried upon the project and the use and disposition of insurance moneys.
9. The keeping, inspection, and audit of books of account.
10. The terms and conditions upon which any or all of the bonds become or may be declared due before maturity and the terms and conditions upon which the declaration and its consequences may be waived.
11. The rights, liabilities, powers, and duties arising upon the breach by the district of any covenants, conditions, or obligations.
12. The vesting in a trustee of the right to enforce any covenants made to secure, to pay, or in relation to, the bonds, the powers and duties of such trustee, and the limitations of liabilities thereof.

13. The terms and conditions upon which the holders of the bonds, or the holders of any proportion or percentage of them, may enforce any covenants made or any duties imposed under this chapter.
14. A procedure by which the terms of any resolution authorizing bonds or of any other contract with bondholders, including an indenture of trust or similar instrument, may be amended or abrogated, and the amount of bonds that holders of which must consent to the resolution or contract, and the manner in which such consent may be given.
15. The subordination of the security of any bonds issued under this chapter and the payment of principal and interest on those bonds, to the extent deemed feasible and desirable by the governing body, to other bonds or obligations of the district issued to finance or refinance the project or that may be outstanding when the bonds thus subordinated are issued and delivered.

Nothing in this section authorizes any district to do anything in any manner or for any purpose which would result in the creation or incurring of a debt or indebtedness or the issuance of any instrument which would constitute a debt or indebtedness within the meaning of any provision, limitation, or restriction of the Constitution of North Dakota relating to the creation or incurring of a debt or indebtedness or the issuance of an instrument constituting a debt or indebtedness.

61-35-39. Liability of district for bonds - Taxing power prohibited - Bond not a lien.

Revenue and refunding bonds issued under this chapter may not be payable from or charged upon any funds other than the revenue pledged to their payment and the district issuing the bonds may not be subject to any pecuniary liability. The holder of any such bonds may not enforce payment of the bonds against any property of the district. Bonds issued under this chapter do not constitute a charge, lien, or encumbrance upon any property of the district. Each bond issued under this chapter must recite in substance that the bond, and interest on the bond, is payable solely from the revenue pledged to the payment and that the bond does not constitute a debt of the district within the meaning of any constitutional or statutory limitation.

61-35-40. Duties of district and officers. To adequately secure the payment of bonds and interest on the bonds, any district issuing bonds under this chapter, and the district's officers, agents, and employees shall:

1. Pay or cause to be paid punctually the principal and interest of every bond on the dates, at the places, in the manner, and out of the funds provided in the refunding bond and in accordance with the resolution authorizing its issuance.
2. Operate the project in an efficient and economical manner and establish, levy, maintain, and collect related necessary or proper fees, tolls, rentals, rates, and other charges. Such fees, tolls, rentals, rates, and other charges must be sufficient, after making due and reasonable allowances for contingencies and for a margin of error in the estimates, at least:
 - a. To pay all current expenses of operation and maintenance of the project;
 - b. To pay the interest and principal on the bonds as they become due;
 - c. To comply with the terms of the resolution authorizing the issuance of the bonds or any other contract or agreement with the holders of the refunding bonds; and
 - d. To meet any other obligations of the district which are charges, liens, or encumbrances upon the revenues of the project.
3. Operate, maintain, preserve, and keep every part of the project in good repair, working order, and condition.

4. Preserve and protect the security of the bonds and the rights of the bondholders and warrant and defend such rights against all claims and demands.
5. Pay and discharge all lawful claims for labor, materials, and supplies, which, if unpaid, might become by law a lien or charge upon the revenues, or any part of the revenues, superior to the lien of the bonds or which might impair the security of the bonds.
6. Hold in trust the revenues pledged to the payment of the bonds for the benefit of the holders of the bonds and apply the revenues only as provided by the resolution authorizing the issuance of the bonds, or, if the resolution is modified, as provided in the modified resolution.
7. Keep proper separate books of record and accounts of the project in which complete and correct entries must be made of all transactions relating to any part of the project. All books and papers of the district are subject to inspection by the holders of ten percent or more of the outstanding bonds or of their representatives authorized in writing.

None of the duties contained in this section require any expenditure by the district of any funds other than revenue received from the project. The performance of the duties enumerated in this section is of the essence of the contract of the district with the bondholders.

61-35-41. Remedies of bondholders in general. Subject to any contractual limitations binding upon the holders of any issue of bonds, or a trustee for the holders, including the restriction of the exercise of any remedy to a specified proportion or percentage of the holders, any holder of bonds or trustee, for the equal benefit and protection of all bondholders similarly situated, may:

1. By mandamus or other suit, action, or proceeding at law or in equity, enforce the holder's rights against the district and its board and any of its officers, agents, and employees and may require the district or the board or any officers, agents, or employees of the district or board to perform their duties and obligations under this chapter and their covenants and agreements with bondholders.
2. By action or suit in equity, require the district and the board to account as if they were the trustees of an express trust.
3. By action or suit in equity, enjoin any acts or things that may be unlawful or in violation of the rights of the bondholders.
4. Bring suit upon the bond.

A right or remedy conferred by this chapter upon any bondholder, or upon any trustee for a bondholder, is not intended to be exclusive of any other right or remedy, but each such right or remedy is cumulative and in addition to every other right or remedy and may be exercised without exhausting and without regard to any other remedy conferred by this chapter or by any other law of this state.

61-35-42. Receiver of project - When appointed. If the district defaults in the payment of the principal or interest on any of the bonds when due, whether at maturity or upon call for redemption, and the default continues for a period of thirty days, or if the district or the board, or officers, agents, or employees of the district fail or refuse to comply with the provisions of this chapter, or default in any agreement made under this chapter, or default in any agreement made with the holders of the bonds, any bondholder, or the trustee for any bondholder, may apply to the district court of the county in which all or any part of the project is located for the appointment of a receiver of the project whether or not all of the bonds have been declared due and payable and whether or not the holder or trustee is seeking or has sought to enforce any other right or to exercise any other remedy in connection with the bonds. Upon such application, the court may

appoint a receiver of the project. If the application is made by the holders of twenty-five percent in principal amount of the outstanding bonds, or by any trustee for holders of the bonds in that principal amount, the court shall appoint a receiver of the project.

61-35-43. Powers and duties of receiver of project. A receiver appointed under section 61-35-42, directly or by agents and attorneys, shall immediately enter into and upon and take possession of the entire project and may exclude from the project the district, its board, officers, agents, and employees, and all persons claiming under them. The receiver shall have, hold, use, operate, manage, and control the entire project in the name of the district or otherwise as determined by the receiver. The receiver shall exercise all the rights and powers of the district with respect to the project. The receiver shall maintain the project and restore and keep it insured and make all repairs the receiver deems necessary, proper, or expedient. The receiver shall establish, levy, maintain, and collect such fees, tolls, rentals, and other charges in connection with the project as the receiver deems necessary, proper, and reasonable. The receiver shall collect all revenues, deposit them in a separate account, and apply them as the court directs.

61-35-44. Court may direct receiver to surrender possession of project. After payment of all that is due upon the bonds and any other obligations that are a charge, lien, or encumbrance on the revenues of the project under any of the terms of any covenants or agreements with bondholders, and after all defaults have been made good, the court, after notice and hearing as it deems proper, may direct the receiver to surrender the possession of the project to the district. The holders of the bonds have the same right to secure the appointment of a receiver upon any subsequent default as is provided in this chapter in the case of an original default.

61-35-45. Receiver subject to jurisdiction of court - Jurisdiction of court. A receiver under this chapter acts under the direction and supervision of the appointing court and is subject to the orders of that court and may be removed by it. This chapter does not limit the jurisdiction of the court to enter orders it deems necessary for the receiver to exercise any functions set forth in this chapter.

61-35-46. Construction. Powers under this chapter are in addition and supplemental to and not in substitution for, and the limitations imposed by this chapter do not affect the powers conferred by, any other law. Bonds may be issued under this chapter without regard to any other laws of this state, except as provided in section 61-35-39. The project may be acquired, purchased, constructed, reconstructed, improved, bettered, and extended, and bonds may be issued under this chapter for those purposes, notwithstanding that any other law may provide for the acquisition, purchase, construction, reconstruction, improvement, betterment, and extension of a like project or for the issuance of bonds for like purposes, and without regard to the requirements, restrictions, debt, or other limitations or other provisions contained in any other law, including any requirement for any restriction or limitation on the incurring of indebtedness or the issuance of bonds. If this chapter is inconsistent with any other law of this state, the provisions of this chapter are controlling with reference to the issuance of bonds.

61-35-47. Limitations on authorizations contained in chapter - Effect of chapter on bonds issued before August 1, 1995. Nothing in this chapter may be deemed in any way to:

1. Alter the terms of any agreements made with the holders of any outstanding notes, bonds, or other obligations of the district, before August 1, 1995;
2. Authorize the district to alter the terms of any such agreements, or to impair, or to authorize the district to impair, the rights and remedies of any creditors of the district; or
3. To authorize any district to do anything in any manner or for any purpose which would result in the creation or incurring of a debt or indebtedness or the issuance of any instrument that would constitute a debt or indebtedness within the meaning of any provision, limitation, or restriction of the Constitution of North Dakota relating to

the creation or incurring of a debt or indebtedness or the issuance of an instrument constituting a debt or indebtedness.

61-35-48. Power of district to defray expense of improvements by special assessments. Upon complying with this chapter, a district may defray the expense of any or all of the improvements by special assessments, including the construction of all or part of a water supply system or a sewerage system, or both, or any improvement, extension, or replacement of such systems, including the construction and erection of wells, intakes, pumping stations, settling basins, filtration plants, standpipes, water towers, reservoirs, water mains, sanitary and storm sewer mains and outlets, facilities for the treatment and disposal of sewage and other district, industrial, and domestic wastes, and all other appurtenances, contrivances, and structures used or useful for a complete water supply and sewerage system. In planning an improvement project the board may include in the plans any and all items of work and materials which in its judgment are necessary or reasonably incidental to the completion of an improvement project of that type.

61-35-49. Waterworks and water mains - Acquisition of waterworks, sewage treatment and disposal plants and sewer systems. The provisions of this chapter relating to water mains and waterworks apply only to districts that own or contemplate owning a system of waterworks and water mains. In the purchase of a waterworks system or of a sewage treatment or disposal plant or of a system of sewers, either by eminent domain in accordance with chapter 32-15, or otherwise, a district may create improvement districts, direct the preparation of plans and specifications, adopt a resolution declaring the purchase of the facilities necessary, and take all other proceedings prescribed by this chapter which would be taken in case of the construction of such facilities by the district itself for the purpose of defraying the cost by special assessment of the benefited property. The benefited property may be specially assessed for the purchase of such facilities, either separately or as a part of a new system, the same as if the facilities were constructed entirely anew.

61-35-50. Acquiring property for sewers, water mains, and water supply beyond district limits. When it is necessary to conduct the sewage of a district or to acquire a supply of water beyond the district limits and to construct mains or aqueducts to conduct water or sewage to the district limits, the board by grant, purchase, or condemnation proceedings may acquire private property over which to construct the sewer, or upon and over which to establish facilities for obtaining and storing such water supply and aqueducts or mains for conducting water to the corporate limits. Public property may be acquired for those purposes by grant or purchase from the government or public corporation owning the property. The cost of acquiring such property and building such sewer or other facilities upon or over the property may be included in the cost of construction or acquisition of a district waterworks or sewerage system and in the district's special assessments levied, or the entirety of such a project may be completed as an improvement to an existing waterworks or sewerage system and special assessments may be levied for that purpose in accordance with the provisions of this title.

61-35-51. Condemnation of land and rights of way for special improvements - Taking of possession - Trial - Appeal - Vacation of judgment. When property required to make any improvement authorized by this chapter is to be taken by condemnation proceedings, the court, upon request by resolution of the board of the district making the improvement, shall call a special term of court for the trial of the proceedings and may summon a jury for the trial. The proceedings must be instituted and prosecuted in accordance with chapter 32-15, except that when the interest sought to be acquired is a right of way for the laying of any main, pipe, ditch, canal, aqueduct, or flume for conducting water, storm water, or sewage, whether within or without the district, the district may make an offer to purchase the right of way and may deposit the amount of the offer with the clerk of the district court of the county in which the right of way is located, and may then take possession of the right of way. The offer must be made by resolution of the board of the district, and a copy of the resolution must be attached to the complaint filed with the clerk of court in accordance with section 32-15-18. The clerk shall immediately notify the owners of the land on which the right of way is located of the deposit by causing a notice to be appended to the summons when served and published in the proceedings as provided in the North Dakota Rules of Civil Procedure, stating the amount deposited or agreed in the resolution to be deposited. The owner may then appeal to the court by filing an answer to the complaint in

the manner provided in the North Dakota Rules of Civil Procedure, and may have a jury trial, unless a jury is waived, to determine the damages. However, upon due proof of the service of the notice and summons and upon deposit of the aggregate sum agreed in the resolution, the court may without further notice make and enter an order determining the district to be entitled to take immediate possession of the right of way. If under laws of the United States proceedings for the acquisition of any right of way are required to be instituted in or removed to a federal court, the proceedings may be taken in that court in the same manner and with the same effect as provided in this section and the clerk of the district court of the county in which the right of way is located shall perform any and all of the duties set forth in this section, if the clerk is directed to do so by the federal court. The proceedings must be determined as speedily as practicable. An appeal from a judgment in the condemnation proceedings must be taken within sixty days after the entry of the judgment and appeal must be given preference by the supreme court over all other civil cases except election contests. No final judgment in the condemnation proceedings awarding damages to property used by a district for sewer or other purposes may be vacated or set aside if the district pays to the defendant, or into court for the defendant, the amount awarded in cash. The district may levy special assessments within the district to pay all or part of the judgment. To provide funds for the payment of the judgment or for the deposit of the amount offered for purchase of a right of way, the district may issue bonds on the fund of the improvement district as provided in section 61-35-84, in anticipation of the levy and collection of special assessments or revenues to be appropriated to the fund in accordance with this chapter. The bonds may be issued upon or after the commencement of the condemnation proceedings. Upon the failure of the district to make payment in accordance with this section, the judgment in the condemnation proceedings may be vacated.

61-35-52. Improvement districts to be created. For an improvement project under section 61-35-48 and defraying the cost of the project by special assessments, a district may create water districts, sewer districts, and water and sewer districts, and may extend any such district when necessary. The appropriate special improvement district must be created by resolution. The district must be designated by a name appropriate to the type of improvement for which it is created and by a number distinguishing it from other improvement districts. Nothing in this chapter prevents a district from making and financing any improvement and levying special assessments for the improvement under any alternate procedure in this title. For examinations or surveys, the board or its employees, after written notice to each landowner, may enter upon any land on which the proposed project is located or any other lands necessary to gain access.

61-35-53. Size and form of improvement districts - Regulations governing. Any improvement district created by a district may embrace two or more separate property areas. Each improvement district must be of such size and form as to include all properties which in the judgment of the board, after consultation with the engineer planning the improvement, will be benefited by the construction of the improvement project which is proposed to be made in or for the district, or by any portion of the project. A single district may be created for an improvement of the type specified in section 61-35-48, notwithstanding any lack of uniformity among the types, items, or quantities of work and materials to be used at particular locations throughout the improvement district. The jurisdiction of a district to make, finance, and assess the cost of any improvement project may not be impaired by any lack of commonness, unity, or singleness of the location, purpose, or character of the improvement, or by the fact that any one or more of the properties included in the improvement district is subsequently determined not to be benefited by the improvement, or by a particular portion of the improvement project, and is not assessed for that purpose. The board may omit from a water or sewer district properties within the district limits which are benefited by the improvement but do not abut upon a water or sewer main, without prejudice to the right and power of the district subsequently to assess such properties to the extent and the manner permitted by law. The board may by resolution enlarge an improvement district in which an improvement is proposed or under construction upon receipt of a petition signed by the owners of three-fourths of the area to be added to the district.

61-35-54. Engineer's report required - Contents. After a special improvement district has been created, the board, if it deems it necessary to make any of the improvements set out in section 61-35-48 in the manner provided in this chapter, shall direct the engineer for the district, or some other competent engineer, to prepare a report as to the general nature, purpose, and

feasibility of the proposed improvement. The engineer shall prepare profiles, plans, and specifications of the proposed project and estimates of the total cost. The estimate of costs prepared by the engineer must include acquisition of right of way and must be in sufficient detail to allow the board to determine the probable share of the total costs that will be assessed against each of the affected landowners in the proposed assessment district.

61-35-55. Approval of plans, specifications, and estimates. After receiving the engineer's report required by section 61-35-54, the board may direct the engineer to prepare detailed plans and specifications for construction of the improvement. The plans and specifications must be approved by a resolution of the board.

61-35-56. District engineer to retain copy of plans, specifications, and estimates - Sale of copies. The engineer acting for the district shall retain a copy of the plans, specifications, and estimates that have been prepared for any improvement. The engineer shall furnish copies at the request of any person at a reasonable cost.

61-35-57. Plans, specifications, and estimates filed in office of district. The plans, specifications, and estimates prepared as directed under section 61-35-55 are the property of the district, must be filed in the district office, and must remain on file subject to inspection by any interested person.

61-35-58. Hearing - Notice - Contents. Upon the filing of the engineer's report provided for in section 61-35-54, and after satisfying the requirements of section 61-35-55, the district board shall fix a date and place for public hearing on the proposed project. The place of hearing must be in the vicinity of the proposed project and must be convenient and accessible for the majority of the landowners subject to assessment for the project or whose property is subject to condemnation for the proposed project. The board shall cause a complete list of the benefits and assessments to be made, setting forth each county, township, or city assessed in its corporate capacity as well as each lot, piece, or parcel of land assessed, the amount each is benefited by the improvement, and the amount assessed against each. At least ten days before the hearing, the board shall file with the county auditor of each county in which the project is or will be located the list showing the percentage assessment and approximate assessment in dollars against each parcel of land benefited by the proposed project. Notice of the filing must be included in the notice of hearing. Notices of the hearing must contain a copy of the resolution of the board as well as the time and place where the board will conduct the hearing. The notice of hearing must specify when and where votes concerning the proposed project may be filed and contain an assessment list showing the percentage assessment and approximate assessment in dollars against each parcel of land benefited by the proposed project. The board shall cause the notice of hearing to be published once a week for two consecutive weeks in newspapers of general circulation in the area in which the affected landowners reside and in the official county newspaper of each county in which the benefited lands are located. The date set for the hearing may not be fewer than twenty days after the mailing of the notice. A record of the hearing must be made by the board, including a list of affected landowners present in person or by agent, and the record must be preserved in the minutes of the meeting. Affected landowners and the governing body of any county, township, or city to be assessed must be informed at the hearing of the probable total cost of the project and their individual share of the cost and the portion of their property, if any, to be condemned for the project.

61-35-59. Voting on proposed projects. At the hearing, the affected landowners and any county, township, or city to be assessed must be informed when and where votes concerning the proposed project may be filed. Affected landowners and the governing body of any county, township, or city to be assessed, have thirty days after the date of the hearing to file their votes with the secretary of the district. Once the deadline for filing votes has been reached, no more votes may be filed and no person may withdraw a vote. Any withdrawal of a vote concerning the proposed project before that time must be in writing. When the votes have been filed and the deadline for filing votes has passed, the board shall immediately determine whether the project is approved. If the board finds that fifty percent or more of the total votes filed are against the proposed project, then the vote constitutes a bar against proceeding further with the project. If the board finds that the number of votes filed against the proposed project is less than fifty

percent of the votes filed, the board shall issue an order establishing the proposed project and may proceed, after complying with the requirements of sections 61-35-62 and 61-35-63, to contract or provide for the construction or maintenance of the project in substantially the manner and according to the forms and procedure provided in sections 61-35-88 through 61-35-103. The board may enter into any agreement with any federal or state agency under the terms of which the contract for the project is to be let by the federal agency, the state agency, or a combination thereof. In projects where there is an agreement that a party other than the board will let the contract, the board may dispense with all of the requirements of sections 61-35-88 through 61-35-103. Upon making an order establishing or denying establishment of a project, the board shall publish notice of the order in a newspaper of general circulation in the area in which the affected landowners reside and in the official county newspaper of each county in which the benefited lands are located. Any right of appeal begins to run on the date of publication of the notice.

61-35-60. Voting right or powers of landowners. In order that there may be a fair relationship between the amount of liability for assessments and the power of objecting to the establishment of a proposed project, the voting rights of affected landowners on the question of establishing the project are as provided in this section. The landowner of land affected by the project has one vote for each dollar of assessment to which the land is subject or one vote for each dollar of the assessed valuation of land condemned for the project, as determined in accordance with title 57. The governing body of any county, township, or city to be assessed has one vote for each dollar of assessment against such county, township, or city. There may be only one vote for each dollar of assessment, regardless of the number of owners of a tract of land. If more than one owner of a tract of land exists, the votes must be prorated among them in accordance with each owner's property interest. A written power of attorney authorizes an agent to protest a project on behalf of any affected landowner or landowners.

61-35-61. Assessment of cost of project. When the district board proposes to make any special assessment under this chapter, the board, prior to the hearing required under section 61-35-58 shall inspect any and all lots and parcels of land that may be subject to assessment and shall determine from the inspection the particular lots and parcels of lands which, in the opinion of the board, will be especially benefited by the construction of the work for which the assessment is made and shall assess the proportion of the total cost of acquiring right of way and constructing and maintaining such improvement in accordance with benefits received but not exceeding such benefits, against:

1. Any county, township, or city, in its corporate capacity, which may be directly or indirectly benefited by the improvement.
2. Any lot, piece, or parcel of land that is directly benefited by the improvement.

In determining benefits the board shall consider, among other factors, property values, degree of improvement of properties, and productivity. Property belonging to the United States is exempt from assessment unless the United States has provided for the payment of any assessment that may be levied against its property for benefits received. Benefited property belonging to the state, a county, a city, a school district, a park district, or a township is not exempt from assessment and political subdivisions that own assessed property shall provide for the payment of such assessments, including installments and interest, by the levy of taxes according to law. Any county, township, or city assessed in its corporate capacity for benefits received shall provide for the payment of those assessments, installments, and interest from its general fund or by levy of a general property tax against all the taxable property in the political subdivision in accordance with law. No tax limitation provided by any statute of this state applies to tax levies made by any political subdivision for paying any special assessments made under this chapter. There must be attached to the list of assessments a certificate signed by a majority of the members of the board certifying that it is a true and correct assessment of the benefit described to the best of their judgment and stating the several items of expense included in the assessment.

61-35-62. Assessment list to be published - Notice of hearing - Alteration of assessments - Confirmation of assessment list - Filing. After entering an order establishing the project, the district board shall cause the assessment list to be published once each week for two successive weeks in the newspapers of general circulation in the district and in the official county newspaper of each county in which the benefited lands are located. The publication must include a notice of the time and place the board will meet to hear objections to any assessment by any interested party, or an agent or attorney for that party. The date set for the hearing must be not less than twenty days after the first publication of the notice. At the hearing, the board may make such alterations in the assessments as in its opinion may be just and necessary to correct any error in the assessment but must make the aggregate of all assessments equal to the total amount required to pay the entire cost of the work for which the assessments are made or the part of the cost to be paid by special assessment. An assessment may not exceed the benefit as determined by the board to the parcel of land or political subdivision assessed. The board shall then confirm the assessment list and the secretary shall attach to the list a certificate that it is correct as confirmed by the board. The secretary shall file the list in the office of the district secretary.

61-35-63. Appeal to state engineer. Within ten days after the hearing under section 61-35-62, affected landowners and any political subdivision subject to assessment, having not less than twenty-five percent of the possible votes as determined under section 61-35-60, who believe that the assessment has not been fairly or equitably made, or that the project is not properly located or designed, may appeal to the state engineer by petition, to review the assessments and examine the location and design of the proposed project. Upon receipt of a petition the state engineer shall examine the lands assessed and the location and design of the proposed project, and if it appears that the assessments have not been made equitably, the state engineer may proceed to correct the assessments, and the state engineer's correction and adjustment of assessments is final. If it appears to the state engineer that the project has been improperly located or designed, the state engineer may order a relocation and redesign, which must be followed in the construction of the proposed project. Upon filing a bond for two hundred fifty dollars with the board for the payment of the costs of the state engineer in the matter, any landowner or political subdivision claiming to receive no benefit from the project may appeal to the state engineer the question of whether there is any benefit. The appeal must be filed with the state engineer within ten days after the hearing on assessments in section 61-35-62. The state engineer may not determine the specific amount of benefit upon an appeal by an individual landowner or political subdivision and may determine only if there is any benefit to the landowner or political subdivision. The determination of the state engineer upon the appeal is final.

61-35-64. When assessments may be made. After the requirements of this chapter have been satisfied and a contract and bond for any work for which a special assessment is to be levied have been approved by the district board, the board may direct special assessments to be levied for the payment of appropriate costs and the secretary shall certify to the board the items of total cost to be paid by special assessments so far as they have been ascertained. The certificate must include the estimated construction cost under the terms of any contract, a reasonable allowance for cost of extra work that may be authorized under the plans and specifications, acquisition of right of way, engineering, fiscal agents' and attorney's fees for any services in connection with the authorization and financing of the improvement, cost of publication of required notices, printing of improvement bonds, cost necessarily paid for damages caused by such improvement, interest during the construction period, and all expenses incurred in making the improvement and levy of assessments.

A contract or contracts may not be awarded which exceed, by forty percent or more, the estimated cost of the project as presented to and approved by the affected landowners.

61-35-65. Reassessment of benefits. The district board may hold at any time or, upon petition of any affected landowner or political subdivision which has been assessed after a project has been in existence for at least one year, shall hold a hearing for the purpose of determining the benefits of the project to each tract of land affected. At least ten days' notice of the hearing must be given by publication in the newspaper or newspapers having general circulation in the district and in the official county newspaper of each county in which the benefited lands are

located and by mailing notice by ordinary mail to each owner of land whose assessment is proposed to be raised as determined by the records of the recorder or county treasurer. The provisions of this chapter governing the original determination of benefits and assessment of costs apply to any reassessment of benefits carried out under this section. The board may not be forced to make a reassessment more than once every ten years. Any assessment or balance of an assessment supporting a project fund may not be reduced or impaired by reassessment or otherwise so long as bonds payable out of such fund remain unpaid and moneys are not available in such fund to pay all such bonds in full, with interest. Costs of maintenance must be prorated in accordance with any plan for reassessment of benefits that has been adopted.

61-35-66. Correction of errors and mistakes in special assessments - Requirements governing. If mathematical errors or other mistakes occur in making any assessment resulting in a deficiency in that assessment, the district board shall cause additional assessments to be made in a manner substantially complying with chapter 40-26 as it relates to special assessments.

61-35-67. Lien of special assessment. A special assessment imposed by a district, with accrued interest and penalties, is a lien upon the property on which the assessment is levied from the time the assessment list is approved by the district board until the assessment is fully paid. The liens have precedence over all other liens except general tax liens and may not be divested by any judicial sale. Mistake in the description of the property covered by the special assessment lien or in the name of the owner of such property does not defeat the lien if the assessed property can be identified by the description in the assessment list. This chapter must be considered notice to all subsequent encumbrances of the priority of special assessments imposed under this chapter.

61-35-68. Sewer or water improvements in districts may be paid for by service charges. A district constructing a sewer or water improvement under the special assessment method may resolve in the resolution or ordinance required by section 61-35-52, that a portion of the cost of the improvement must be raised by service charges for the use of the improvement and of the utility of which it forms a part. If the district so resolves, it may determine in its resolutions, ordinances, and other proceedings relating to the levying of special assessments and the issuing of bonds to pay the cost of such improvement, that a specified portion or all of such cost must be assessed specially against any property specially benefited and may cause to be assessed only the portion so determined. In that event the entire remainder of the cost, including interest as well as principal of any bonds issued, over and above the amount of special assessments actually collected and received from time to time in the fund of the improvement district, must be paid from the net revenues derived from the service charges. All of the applicable provisions of this chapter relating to special assessments are applicable to such improvements except as to the portion of the cost of improvements resolved or ordained to be paid by service charges. The board of the district shall provide for the establishment, imposition, and collection of service charges for the services furnished by the improvement and the utility of which it forms a part, and in that connection it has all the rights and powers respecting such service charges as it would have with respect to like matters if the improvement were made in accordance with chapter 40-35. The net revenues derived from the imposition and collection of the service charges or any portion of the service charges as are determined by the board in the resolutions and ordinances must be paid into the appropriate improvement district funds created under section 61-35-83. The revenues when collected must be used and applied in the same manner as moneys paid into such funds from the collection of special assessments. The board of any district issuing bonds to finance any such improvement, in its resolutions and ordinances, may establish an assessment reserve in the fund of the improvement district, to which it may appropriate net revenues of the utility or system from time to time received in excess of amounts required, with special assessments then on hand, to meet the principal and interest next due on the bonds. Before November first of any year the district may by resolution determine the proportion which the amount then on hand in the assessment reserve, and irrevocably appropriated to the payment of the bond, bears to the aggregate amount of the installment of the special assessments levied for the improvement which is payable in the following year, including interest. The district may direct the auditor to reduce, by not more than a proportionate amount, the total of that installment and interest which would otherwise be placed upon the tax list of the

district for the current year, against each lot and tract of land assessed or taxed for improvement. If the installment of the special assessment on any property has been prepaid, the board may direct the district to refund, out of the assessment reserve, to the owner of the property at the time of the refund as indicated in the records of the recorder of the county, a sum not exceeding a similar proportion of the principal amount of such installment, excluding interest.

61-35-69. Abbreviations, letters, or figures may be used in proceedings for levy and collection of special assessments. In all proceedings for the levy and collection of special assessments, abbreviations, letters, and figures may be used to denote all or parts of additions, lots, lands, blocks, sections, townships, ranges, years, days of the month, and amounts of money.

61-35-70. District office to keep complete record of improvements - Record as evidence. The district office shall keep a complete record of all the proceedings taken in the matter of making any improvements under this chapter. The record must include all reports and confirmations, all petitions, orders, notices and proofs of publication, and resolutions of the board. The record, a certified transcript of the record, or the original papers, proofs of publications, orders, or resolutions on file in the office must be admitted in evidence in any court or place in this state without further proof as evidence of the facts in those documents.

61-35-71. Defects and irregularities in improvement proceedings are not fatal. Defects and irregularities in any proceedings had or to be had under this chapter relating to district improvements by the special assessment method, if the proceedings are for a lawful purpose and are unaffected by fraud and do not violate any constitutional limitation or restriction, do not invalidate the proceedings, and no action may be commenced or maintained and no defense or counterclaim in any action may be recognized in the courts of this state founded on any such defects or irregularities in the proceedings, unless commenced within thirty days of the adoption of the resolution of the board awarding the sale of bonds to finance the improvement.

61-35-72. Payment of special assessments - Interest. All special assessments levied under this title may be paid without interest within ten days after they have been approved by the board and thereafter bear interest at an annual rate not exceeding one and one-half percentage points above the average net annual interest rate on any bonds for the payment of which they are pledged on the total amount remaining unpaid.

61-35-73. Lien between vendor and vendee of special assessments. As between a vendor and vendee of real property, unless the purchase contract otherwise provides, the installments of all special assessments for local improvements which are required to be certified and returned to the county auditor in each year become a lien upon the real property upon which they are assessed from and after the first day of December in that year.

61-35-74. Sewer special assessments extended over a period of not more than thirty years. Special assessments for the payment of the cost of constructing any sewer are payable in equal annual amounts, or in such annual amounts as will permit the annual increase in payment of principal to approximate the annual decrease in the interest on amounts remaining unpaid, extending over a period of not exceeding thirty years as the board may fix by ordinance or resolution.

61-35-75. Water main and waterworks special assessments extended over a period of not more than thirty years. Special assessments for the payment of the cost of constructing or laying any water mains or constructing any waterworks are payable in equal annual amounts, or in such annual amounts as will permit the annual increase in payment of principal to approximate the annual decrease in the interest on amounts remaining unpaid, extending over a period of not more than thirty years as the board may fix by ordinance or resolution.

61-35-76. Payments in full of assessments - Payments to county treasurer or district treasurer - Receipts. The owner of any property against which an assessment has been made under this title for the cost of any improvement may pay in full or in part the amount remaining unpaid and the unpaid accumulated interest. The payment in full discharges the lien

of the assessment upon that property. The payment may be made to the county treasurer upon all installments of the assessments which have been certified to the county auditor, and may be made to the district treasurer upon all portions of the assessment which have not been certified. Any person desiring to pay any portion of the assessment to the district treasurer shall obtain from the district treasurer a certificate of the amount due upon the assessment which has not been certified to the county auditor and shall present the certificate to the district treasurer. The district treasurer shall receive and collect that amount and issue a receipt to the person paying the assessment. The district treasurer shall note upon the treasurer's records the payment of the assessment.

61-35-77. Certification of assessments to county auditor. When a district board, by resolution, has caused special assessments to be levied to cover the cost of constructing a project, the board shall determine the rate of interest unpaid special assessments are to bear, which rate may not exceed one and one-half percent above the bond rate. Interest on unpaid special assessments commences on the date the assessments are finally confirmed by the board. Special assessments may be certified and made payable in equal annual installments, the last of which must be due and payable not more than thirty years after date of the bonds to be paid. The secretary of the district shall certify to the county auditor of the county in which the district is situated, or if the district embraces more than one county, to the county auditor of each county in which district lands subject to such special assessments are situated, the total amount assessed against each piece, parcel, lot, or tract of land. The secretary of the district shall also file with the county auditor of each county in which district lands lie a statement showing the cost of the project and the part of the project to be financed by special assessments. Funds needed to pay the cost of maintaining a project may be raised in the same manner as funds were raised to meet construction costs. If the project was financed in whole or in part through the use of special assessments, the district board shall prorate the cost of construction or, if a reassessment of benefits has been adopted, the costs must be prorated in accordance with the reassessment of benefits as authorized by section 61-35-65. The district treasurer shall annually certify to the county auditor all uncertified installments of assessments which are to be extended upon the tax lists of the district for the current year, in the manner provided in this section. The annual certification must continue until the amount of moneys on deposit in the fund established under section 61-35-83 is sufficient to cover outstanding principal of and interest on any obligations issued to fund the projects, and in addition, to repay the district for any payments made by the district to fund deficiencies in the fund established under section 61-35-83.

61-35-78. District treasurer to insert amount of improvements in county real estate book or other forms - Regulations governing. The district treasurer shall notify the county auditor not later than August twentieth in each year of any special assessments that were made in the district in addition to those reported in the previous year. The county auditor shall make and deliver to the district treasurer on or before September twentieth each year a copy of the real estate assessment book or other forms for the current year covering all additions in which any special assessments have existed and where any will appear for the current year as advised by the district treasurer. The district treasurer shall insert in the proper columns under the appropriate headings the amount of each of the installments of the assessments on the lots or subdivisions of lots or tracts of land which are to be extended upon the tax lists of the district for the current year. The district treasurer shall show the total amount of special assessments certified to the county auditor for the current year. If a division of property has been made since the original assessment, the district treasurer shall make or cause to be made the proper division of the special assessments on the lots or tracts of land in the same manner as general taxes are divided and assessed as furnished by the county auditor. The district treasurer shall certify the special assessments to the county auditor by November first of each year.

61-35-79. Extension of special assessments on tax lists - Collection - Payment over to district. The county auditor shall extend the special assessments upon the tax lists of the district for the current year and the assessments with interest and penalties must be collected as general taxes are collected and paid over to the district treasurer and shall be placed by the district treasurer in the respective funds for which they were collected.

61-35-80. Special assessment record book kept by county auditor - Assessments certified for more than one year. The county auditor shall keep a special assessment record. When any district causes the installments of special assessments for a period of more than one year to be certified, the county auditor shall cause the certified special assessments to be recorded for the respective years and in the amounts shown in the certificate of the district treasurer. The certificate of the district treasurer must include a list of all lots and tracts of land upon which such assessments are levied, designating the purpose of the assessment, the fund to which it belongs, and the installment of such assessment for each year against each lot or tract, including interest.

61-35-81. County treasurer to certify and receipt for amount of special assessments collected - Contents of certificate - Procedure for abatement. Special assessments of any kind certified to the county auditor by the district treasurer must be paid to the county treasurer and included in the receipt required by section 57-20-08. If the county treasurer receives less than the full amount of taxes and special assessments due at any time on any lot or tract of real estate, the county treasurer shall allocate the amount of such payment between taxes and special assessments in proportion to the respective amounts of taxes and special assessments which are then due. When prorating any tax payment received before October fifteenth, the term "due", as it pertains to real estate taxes, includes only the first installment of real estate taxes. Special assessments are not subject to abatement or refund by proceedings under chapter 57-32 but may be reviewed and corrected only in the manner and upon the conditions provided in chapter 40-26. The county treasurer, at the time set by law for the payment to the district treasurer of all the taxes and special assessments collected during the preceding month, shall certify the amounts of special assessments collected. The certificate must state specifically the lot or known subdivision as it appears on the tax books of the county treasurer, and the block, addition, amount collected, and amount credited to each lot or known subdivision, and the year for which the sum was collected. The certificate must be furnished to the district treasurer.

61-35-82. Interest and penalties added to special assessments - County treasurer to collect and pay over. The county treasurer shall add to all special assessments the same interest and penalties that are added in the case of general taxes and at the same time. The county treasurer shall collect the interest and penalties with the special assessments and shall pay all such interest and penalties collected over to the district treasurer.

61-35-83. Special improvement moneys to be kept separate - Designation and numbering of funds - Diversion of moneys prohibited. All special assessments and taxes levied and other revenues pledged under the provisions of this chapter to pay the cost of an improvement constitute a fund for the payment of that cost, including all principal of and interest on bonds and other obligations issued by the district to finance the improvement, and may be diverted to no other purpose. The district treasurer shall hold all moneys received for any such fund as a special fund to be applied to payment for the improvement. Each fund must be designated by the name and number of the improvement district in or for which the special assessments, taxes, and revenues are collected. When all principal and interest on bonds and other obligations of the fund have been fully paid, all moneys remaining in a fund may be transferred into the general fund of the district.

61-35-84. Bonds - When payable - Amounts - Interest. At any time after entering into a contract for a project to be financed in whole or in part by special assessments, a district may issue temporary and definitive bonds on the project fund, created for that purpose, in the manner and subject to the limitations prescribed in section 40-24-19. If the bonds are issued to finance a sewer or water project, the net revenues derived from the imposition of service charges to be imposed and collected with respect to the project as provided in section 61-35-68 may be pledged to payment of those bonds, except that the first maturity date of any such bond may not be less than two years from the date of issuance. Bonds issued under this section must be in amounts as in the judgment of the board will be necessary for the project. The bonds must bear interest at a rate or rates and be sold at a price resulting in an average net interest cost not exceeding twelve percent per annum if sold at private sale. There is no interest rate ceiling on bond issues sold at public sale or to the state or any of its agencies or instrumentalities. The

bonds must state upon their face the purpose for which they are issued and the project fund from which they are payable and must be signed by the chairman of the board and countersigned by the secretary of the district. The bonds must be payable serially in such amounts as the board determines, extending over a period of not more than thirty years.

61-35-85. Bonds may be used in making payments on contract - Bonds payable out of fund on which drawn - May be used to pay special assessments. Improvement bonds may be used in making payments on contracts for construction of the project for which the special assessment fund was created, or may be sold for cash at not less than ninety-eight percent of par and accrued interest, and the proceeds, less accrued interest, must be credited to the construction account of the fund and must be used exclusively to pay those contracts and construction costs. Any balance remaining in any construction account after completion of any project must be transferred to the sinking fund account of the assessment fund. The treasurer of the district shall pay special assessment bonds as they mature and are presented for payment out of the fund on which they are drawn and shall cancel the bonds when paid.

61-35-86. Refunding special assessment bonds - Purposes for which such bonds may be issued - Payment of bonds. Any district having outstanding special assessment bonds, payable in whole or in part out of collections from special assessments, which are past due or which are redeemable, either at the option of the district or with the consent of the bondholders, may issue refunding special assessment bonds if there is not sufficient money in the project fund against which such bonds are drawn to pay the same. The issuance of refunding bonds must be authorized by resolution of the district board. The resolution must describe the bonds to be refunded and their amount and maturity. Refunding bonds may be issued for any of the following purposes:

1. To extend the maturities of bonds payable in whole or in part by special assessments.
2. To reduce the interest on the bonds.

Refunding bonds must bear such date, be in such date, be in such denominations, and mature serially within such time, not exceeding thirty years from date of issuance, as the board determines. The average rate of interest on the bonds may not exceed the average rate of interest on refunded bonds.

The treasurer of the district shall pay special assessment bonds as they mature and are presented for payment out of the fund against which they are drawn and shall cancel the bonds when paid. Any deficiency in any fund created for the payment of district bonds payable in whole or in part out of collections of special assessment taxes must be the general obligation of the district.

61-35-87. Foreclosure of tax lien on property when general and special assessment taxes are delinquent. Special assessments imposed under this chapter become due and delinquent and are subject to penalties for nonpayment at the same date and rates as first installments of real estate taxes at the same time and in the same manner as provided in title 57.

If there is no delinquent general property tax against a tract or parcel of land and it is foreclosed for special assessments alone, the notice of foreclosure of tax lien must state that the foreclosure is for special assessments and a tax deed in such case must be issued in the usual course of procedure.

61-35-88. Call for bids - Contents - Advertising. Proposals for the work of making improvements provided for in this chapter that exceed the amount provided for construction of a public improvement under section 48-01.2-02 must be advertised for by the board in the official newspaper of the county where the district office is located once each week for two consecutive weeks. The board may cause the work on two or more improvements to be combined in one

advertisement and one contract awarded pursuant to that advertisement. The advertisement for bids must:

1. Specify the work to be done according to the plans and specifications on file in the office of the district;
2. Call for bids upon the basis of cash payment for the work;
3. State the time within which the bids will be received; and
4. State the time within which the work on the improvement is to be completed.

The board may require bidders to state also the rate of interest, not exceeding seven percent per annum, which the bonds to be received and accepted by the bidder at par in payment for the work are to bear.

61-35-89. Bid to be accompanied by a bond - Bond retained upon failure of bidder to contract - Amount of bond. Each bid for any work to be done under this chapter must be accompanied by a separate envelope containing a bidder's bond in the amount of five percent of the amount of the bid, executed as provided in this chapter and running to the district that the bidder will enter into a contract for performance of the work in case a contract is awarded to the bidder. If any bidder to whom a contract is awarded fails or refuses to enter into the contract when requested to do so, the bond accompanying the bidder's bid must be retained by the district as liquidated damages for the failure. The bond must be delivered to the district office and credited to the fund from which the consideration for the work is payable. The sufficiency of any bond filed by a bidder must be determined by the board at the time of considering bids.

61-35-90. Execution of bidder's bond. The bidder's bond must be executed by the bidder as principal and may be provided by a surety company authorized to do business in this state as surety or by a bank letter of credit, a cash bond, or a certified check.

61-35-91. Conditions of bidder's bond. A bidder's bond must be made payable to the district and conditioned that if the principal's bid is accepted and the contract for the work of improvement awarded to the bidder, the bidder, within ten days after the acceptance of the bid, or within such further time as the board grants, will enter into and execute a contract bond in a sum equal to the amount of the bid, and a contract in writing to and with the district well and faithfully to perform and complete the work for which the bid was accepted, in accordance with the plans and specifications and the terms of the bid and within the time required by the terms of the contract, and that the bidder will pay for all the labor and materials used in such work. The bond must be for the benefit of the district.

61-35-92. Bids - Filing - Sealing - Endorsing - Opening - Considering. Bids for the work to be let under this chapter must be forwarded to the district office and must be sealed securely to prevent opening without detection. There must be endorsed upon the outside of the envelope containing the bid a statement of what work the proposal is for. The bids must be opened by the board at the expiration of the time limited in the advertisement for receiving the same, which may not be less than fifteen days after the first publication of the advertisement, or at such other time as the board may appoint. Only bids that are accompanied by the bond provided for in section 61-35-89 may be considered by the board.

61-35-93. Opening of bids - Bids to be entered on minutes. After the bids have been opened and made public, they must be entered upon the minutes of the meeting of the board of the district at which they are considered, and they must be preserved carefully by the district secretary.

61-35-94. Rejection of bids - Re-advertising for bids or construction by district without contract - Reevaluation of project. If in its opinion the best interests of the district require, the board may reject any and all bids filed under this chapter. If all bids are rejected, the board may:

1. Readvertise for new bids;
2. Cause the work described in the plans, specifications, and estimates to be done directly by the district by the employment of labor and the purchase of materials required, or in any other manner the board considers proper, and payment for the work may be provided through special assessments in the same manner as though the work had been performed under contract, provided this work amounts to no more than the amount provided for construction of a public improvement under section 48-01.2-02; or
3. Cause the work described in the plans, specifications, and estimates to be reviewed and reevaluated by the engineer for the district so that the board may determine whether the entire project or only a portion of the project is feasible.

61-35-95. Engineer's statement of estimated cost required - Board to enter into contracts. Before adopting or rejecting any bid filed under this chapter, the board shall require the engineer for the district to make a careful and detailed statement of the estimated cost of the work. The board may not award the contract to any bidder if the engineer's estimate prepared under this section exceeds the engineer's estimate prepared under section 61-35-54 by forty percent or more. If all bids are not rejected, the board shall award the contract to the lowest responsible bidder, upon the basis of cash payment for the work, if the bidder has furnished the certified check or bidder's bond required under the provisions of this chapter.

61-35-96. Contractor's bond - Execution. Within the time fixed by the board for executing the contract, the successful bidder shall file with the district a contract bond in a sum equal to the full amount of the contract. The bond must be executed by the bidder or contractor as principal and by a surety company authorized to do business in this state as surety.

61-35-97. Conditions for contractor's bond. The contractor's bond must be made payable to the district and must be conditioned:

1. That the contractor well and faithfully will perform the work bid for in accordance with the terms of and within the time provided for in the contract, and pursuant to the plans and specifications for the work on file in the district office;
2. That the contractor will pay for all labor and material used in that work; and
3. That in case of a default on the part of the bidder or contractor in the performance of the work as provided in the contract, the sum named in the bond must be taken and held to cover the amount necessary to compensate the district for the correction, repair, or replacement caused by the default, and that the full amount may be recovered from the bidder and the bidder's sureties in an action by the district against them on the bond only in the event of a complete failure of performance on the part of the contractor. Nothing in this section may be construed to prevent the district from receiving the amount, not in excess of the amount of the bond, necessary to compensate the district for correction, repair, or replacement caused by default of the contractor which does not constitute complete failure of performance by the contractor.

61-35-98. Approval of bonds - Return of bidder's bond. The contractor's bond must be approved by the governing body, and thereupon it is and remains in full force and effect. Upon the execution of the contract and the approval of the contract bond, the bidder's bond must be returned.

61-35-99. Failure to execute contractor's bond. If the successful bidder, within ten days after the acceptance of the bid or such further time as the board may grant, does not execute a contractor's bond and a contract for the completion of the work described in the bid, the board may cause the work to be done, or it may contract with some other contractor to do or complete the work. In that case, the district may recover in a suit on the defaulting bidder's bond

the difference between the actual cost to the district of the improvements and the sum that it would have cost if the defaulting bidder had complied with the bidder's bid.

61-35-100. Insufficiency of bonds - New bonds required - Failure to furnish. If the board, at any time, deems the bond of a contractor insufficient either in form or as to sureties, it may require the successful bidder or contractor to furnish, within such reasonable time as the board may fix, a new bond to be approved by the board. If the contractor fails, after notice, to furnish the new bond within the time required, the contractor's contract may be canceled, and in that event the contractor's bond will be liable as if the contractor had failed to perform the contract.

61-35-101. Execution and filing of contract. All contracts entered into for any work provided for in this chapter must be entered into in the name of the district and must be executed on the part of the district by the president and countersigned by the secretary. After the contract is signed by the contractor, it must be filed in the office of the district.

61-35-102. Conditions and terms. A contract let under this chapter requires the work to be done pursuant to the plans and specifications on file in the office of the district, subject to the approval of the engineer acting for the district, and must provide:

1. That the board has the right to suspend the work at any time for improper construction and to relet the contract or to order a reconstruction of the work as to any part improperly done.
2. The time within which the work must be completed.
3. The period of time for which the work must be guaranteed as to workmanship and materials.
4. The fund from which the contract price is to be paid by the district.
5. That the consideration expressed in the contract is payable only in bonds drawn on the fund described in the contract.
6. That the district assumes and incurs no general liability under the contract.
7. That failure of the engineer to reject work and materials that are not up to specifications and acceptance of the job by the engineer does not release the contractor from liability for any failure on the contractor's part to perform work or furnish materials in accordance with the plans and specifications.

The engineer acting for the district shall provide construction administration and observation of the work during its progress. In addition to any rights a district may have under its contract for construction of part or all of an improvement after a contract has been awarded and before work under the contract has been completed, a district, with the consent of the contractor and without advertising for bids, may order additional work done by that contractor of the same character as the work that was contracted for, whether within or without the improvement district for which the original contract was made, and upon the same terms and conditions specified in the original contract except as to time of performance, and at the same prices for the additional work; provided, that the total price payable to the contractor for the additional work may not exceed twenty percent of the amount estimated by the engineer for the district to be payable for that character of work under the original contract.

61-35-103. Contractor to be paid during progress of work - Retainage - Failure to pay - Rate of interest - Investment of retainage. If the contractor to whom a contract is let properly performs the work designated in the contract, the board, at least once in each calendar month during the continuance of the contract work, shall meet and receive and consider estimates furnished by the agent, engineer, or architect acting for the district or if not so furnished, then by the contractor, and shall allow such estimates in an amount of the estimated

value of the labor and material furnished upon the contract, and of the material then upon the ground for use in the contract, subject to retentions as follows: ten percent of each estimate presented until such time as the project is fifty percent completed, with no further retainage on estimates during the continuance of the contract. Upon completion of ninety-five percent of the contract according to the estimates, the board may pay to the contractor ninety-five percent of the amount retained from previous estimates. Any amount retained after ninety-five percent completion of the contract must be paid to the contractor in such amounts and at such times as are approved by the district, upon estimates by its agent, engineer, or architect or the contractor, with final payment of all moneys due to the contractor to be made immediately following completion and acceptance of the project. Immediately after considering and allowing any such estimate, the board shall certify and forward the same to the district treasurer or other official having the power to draw bonds, who forthwith shall draw a warrant upon the proper fund and transmit the same promptly to the contractor. If the board fails or neglects to receive and allow such estimate or certify any estimate or final payment upon completion and acceptance or the proper officer required to issue such warrant fails or neglects to issue a warrant as provided in this section, for a period of more than thirty days from the date of such estimate or completion date, then the estimate or final payment, together with any retainage properly payable, draws interest from its date at the rate per annum of two percentage points below the Bank of North Dakota prime interest rate as set thirty days from the date of such estimate or completion date until the issuance of a proper warrant. Interest must be computed and added to the face of the estimate, final payment, or retainage by the officer required to issue the warrant, must be included in the warrant when drawn, and must be charged to the fund from which payment for the improvement is to be made. On the amounts of estimates retained, as provided in this section, the board, authorized committee, or public body in charge of the work may invest or deposit the retained amounts in any financial association or institution in this state earning interest or dividends for the benefit of the contractor. Any amounts so invested or deposited must remain in the name of the board, authorized committee, or public body in charge of the work until final payment of all money due to the contractor is to be made. Further, a contractor may not use or pledge such amount in any manner until released and received by the contractor upon completion of the contract.

**CHAPTER 61-36
DEVILS LAKE OUTLET COMMITTEE**

<u>Section</u>		<u>Page</u>
61-36-01	Devils Lake outlet management advisory committee - Members - Terms - Vacancies	61-36: 1
61-36-02	Chairman - Quorum - Meetings	61-36: 1
61-36-03	Compensation and expenses.....	61-36: 1
61-36-04	Development of an annual operating plan.....	61-36: 1

CHAPTER 61-36

DEVILS LAKE OUTLET COMMITTEE

61-36-01. Devils Lake outlet management advisory committee - Members - Terms - Vacancies. The Devils Lake outlet management advisory committee consists of the state engineer or the state engineer's designee, one member appointed by the Red River joint water resource board, one member appointed by the Devils Lake joint water resource board, one member appointed by the upper Sheyenne River joint water resource board, one county commissioner from Ramsey County appointed by the Ramsey County board of county commissioners, one county commissioner from Benson County appointed by the Benson County board of county commissioners, a representative of the Spirit Lake Nation appointed by the tribal council of the Spirit Lake Nation, and three members appointed by the governor. The members appointed by the governor must represent the interests affected by downstream impacts of operating an outlet to Devils Lake. An appointed member may designate a substitute to serve in that person's capacity at such meetings that person may be unable to attend. Except for the first term, all appointed members serve for a term of four years or until their successors are appointed and qualified. For the first term, two of the members from the Devils Lake basin must serve two-year terms and two of the other appointed members must serve two-year terms, provided that at least one member representing the interests affected by downstream impacts of operating an outlet to Devils Lake must remain on the committee for a four-year term. The chairman shall hold the first meeting within two months after August 1, 1997. *Terms expire on the first day of July.* Each appointed member must be a qualified elector of the state and is subject to removal by judicial procedure. A vacancy must be filled in the same manner as original appointments for the remainder of the unexpired term. Before entering upon the discharge of official duties, each appointed member shall take, subscribe, and file with the secretary of state the oath prescribed for civil officers.

61-36-02. Chairman - Quorum - Meetings. The state engineer is the chairman of the committee. A majority of the members of the committee constitutes a quorum. The committee may hold meetings at the call of the chairman or at the request of three members of the committee at such times and places as the chairman provides.

61-36-03. Compensation and expenses. Each member appointed by the governor is entitled to receive as compensation sixty-two dollars and fifty cents per day and must be reimbursed for expenses, while attending meetings of the committee.

61-36-04. Development of an annual operating plan. The committee shall develop an annual operating plan for the operation of the Devils Lake outlet. The plan must specify the lake elevation at which pumping will take place. In developing the annual operating plan, the committee shall consider spring runoff forecasts, weather forecasts, summer flooding potential, downstream impacts including water quality and streambank erosion, flooding, and any other factors the committee determines should be considered. The committee must recommend a plan of operation to the state water commission within two weeks following the first official numeric national weather service spring snowmelt flood outlook. If a majority of members are unable to agree on a plan, one or more minority plans may be submitted to the state water commission. The state water commission may approve, recommend changes, or make changes to the annual operating plan.

CHAPTER 61-37 IRRIGATION DISTRICT FINANCE PROGRAM

<u>Section</u>		<u>Page</u>
61-37-01	Definitions	61-37: 1
61-37-02	Creation of program	61-37: 1
61-37-03	Participation voluntary - Agreement to participate	61-37: 1
61-37-04	Guarantee, lending, and borrowing powers	61-37: 1
61-37-05	How bonds or guarantees may be secured	61-37: 2
61-37-06	Powers	61-37: 2
61-37-07	Guarantee of the program	61-37: 3
61-37-08	Bonds of the program	61-37: 3
61-37-09	Pledges	61-37: 3
61-37-10	Reserve fund	61-37: 3
61-37-11	Additional reserves and funds	61-37: 5
61-37-12	Personal liability - Purchase of bonds - Bonds as legal investments - Security	61-37: 5
61-37-13	Tax exemptions - Exemption of property from execution sale	61-37: 5
61-37-14	Insurance or guaranty	61-37: 6
61-37-15	Remedies on default of municipal securities	61-37: 6
61-37-16	Form of municipal securities and investments	61-37: 6
61-37-17	Presumption of validity	61-37: 6
61-37-18	Protection of service during term of guarantee or loan	61-37: 6

CHAPTER 61-37

IRRIGATION DISTRICT FINANCE PROGRAM

61-37-01. Definitions. In this chapter, unless the context or subject matter requires otherwise:

1. "Bond" means an evidence of indebtedness of the program issued by the commission.
2. "Bondholder" or any similar term, when used with reference to a bond of the program, means any person who is the bearer of any outstanding bond of the program.
3. "Commission" means the state water commission.
4. "Fully marketable form" means a municipal security duly executed and accompanied by an approving legal opinion of a counsel whose opinions are generally accepted by the purchasers of municipal securities.
5. "Municipal security" means an evidence of indebtedness issued by an irrigation district.
6. "Program" means the North Dakota irrigation district finance program established by the commission under this chapter.
7. "Required debt service reserve" means the amount required to be on deposit in the reserve fund.
8. "Reserve fund" means the program reserve fund or funds.
9. "Revenues" means any or all fees, charges, moneys, profits, payments of principal of or interest on municipal securities, investment income, revenues, appropriations, liquidation of security, and all other income derived or to be derived by the commission under the program.

61-37-02. Creation of program. The North Dakota irrigation district finance program is established under the operation, management, and control of the commission. The program is constituted as an instrumentality of the state exercising public and governmental functions.

61-37-03. Participation voluntary - Agreement to participate. Participation in the program by an irrigation district is voluntary and no irrigation district may be required to sell its municipal security issues to the program. Notwithstanding any other law, an irrigation district that wishes to participate in the program may enter into an agreement with the program for the purchase by the program of a municipal security issue of the irrigation district, including the purchase by the program of an issue of refunding municipal securities, which may be required by agreement with the program to be issued at a rate of interest higher or lower than that of the municipal security issue to be refunded.

61-37-04. Guarantee, lending, and borrowing powers. The program may guarantee municipal securities issued by an irrigation district. The program may lend money to irrigation districts through the purchase and holding of municipal securities which are eligible for purchase by the program, under this chapter, according to the terms of a guarantee by the program for the payment of debt service on a municipal security of an irrigation district. However, the program may lend money to irrigation districts through the purchase and holding of municipal securities issued by the irrigation district, without regard to the initial issuance of a guarantee of the principal amount and interest payable on the municipal securities issued, if the commission approves a resolution that authorizes the program to purchase and hold those municipal securities. The authorizing resolution must state that the commission has determined that

private bond markets will not be responsive to the needs of the issuing irrigation district concerning the municipal securities or that the municipal securities cannot be sold through private bond markets without the guarantee of the program. The program may hold municipal securities acquired under this chapter for any length of time necessary. The program, for the purposes authorized by this chapter, may issue its bonds payable solely from the revenues available to the program which are authorized or pledged for payment of program bonds and obligations, and assist irrigation districts as provided in this chapter. Bonds or guarantees of the program issued under this chapter are not a debt or liability of the state and do not constitute a loan of the credit of the state, create any debt or liability on behalf of the state, or constitute a pledge of the faith and credit of the state. The bonds are payable solely from revenues pledged or available for their payment as authorized in this chapter. Each bond must contain on its face a statement to the effect that the program is obligated to pay the principal or interest, and redemption premium, if any, and that neither the faith and credit nor the taxing power of the state is pledged to the payment of the principal or the interest on the bonds. Specific funds pledged to fulfill the program's obligations are obligations of the program. All expenses incurred in carrying out this chapter are payable solely from revenues or funds provided or to be provided under this chapter and nothing in this chapter may be construed to authorize the program to incur any indebtedness or liability on behalf of or payable by the state. Guarantees or bonds issued under this chapter are in the public interest and are not subject to the limitation contained in subsection 2 of section 61-02-46.

61-37-05. How bonds or guarantees may be secured. A bond or guarantee issued by the program may be secured by works or lands and the income derived from those works or lands.

61-37-06. Powers. The program has the following powers:

1. To sue and be sued.
2. To make and enforce bylaws and rules for the conduct of its affairs and business and for use of its services.
3. To acquire, hold, use, and dispose of its income, revenue, funds, and moneys in accordance with law.
4. To acquire, rent, lease, hold, use, and dispose of other personal property for its purposes.
5. To borrow money and to issue its negotiable bonds or notes and to provide for and secure their payment and to provide for the rights of the holders, and to purchase, hold, and dispose of any of its bonds and obligations.
6. To fix, revise, charge, and collect fees and charges for the use of its services or facilities.
7. To perform any acts and do all things authorized by this chapter, through its officers, agents, or employees, or by contracts with any person.
8. To make and enforce all contracts necessary or desirable for the program or pertaining to any loan to a political subdivision or any purchase or sale of municipal securities or other investments or to the performance of its duties and execution of its powers under this chapter.
9. To purchase or hold municipal securities of irrigation districts at the prices and in the manner deemed advisable by the program and to sell municipal securities acquired or held by it in the manner deemed advisable by the program.
10. To invest any funds or moneys of the program not then required for loans to irrigation districts and for the purchase of municipal securities in the same manner

as permitted for the investment of funds belonging to the state or the Bank of North Dakota.

11. To fix and prescribe any form of application or procedure to be required of an irrigation district for the purpose of any guarantee, loan, or the purchase of its municipal securities, and to fix the terms and conditions of any guarantee, loan, or purchase and to enter into agreement with irrigation districts with respect to any such guarantee, loan, or purchase
12. To consider the need, desirability, or eligibility of a guarantee or loan, the ability of an irrigation district to secure borrowed money from other sources, and the costs of that borrowing without program involvement.
13. To impose and collect charges from an irrigation district for its costs and services in review or consideration of any proposed guarantee or loan to an irrigation district or purchase of municipal securities of an irrigation district, and to impose and collect charges whether or not a guarantee or loan has been made or municipal securities have been guaranteed or purchased.
14. To fix and establish any and all terms and provisions with respect to any guarantee or purchase of municipal securities by the program, including dates and maturities of bonds, provisions as to redemption or payment prior to maturity, and any and all other matters necessary or advisable in the judgment of the program.
15. To procure insurance against any losses in connection with its property, operations, or assets in the amounts and from the insurers as necessary to pay the premiums on the insurance.
16. To the extent permitted under its contracts with the holders of bonds of the program, to consent to any modification with respect to rates of interest, time, and payment of any installment of principal or interest, security, or any other term of bond, contract, or agreement of any kind to which the program is a party.
17. To do all acts and things necessary, convenient, or desirable to carry out the powers expressly granted or necessarily implied in this chapter.

61-37-07. Guarantee of the program. A guarantee by the program of municipal securities of an irrigation district must be authorized by resolution of the commission and must be evidenced by a written agreement approved by the commission.

61-37-08. Bonds of the program. Bonds of the program must be authorized by resolution of the commission and may be issued in the form, with dates, interest rates, denominations, rights of conversion, registration, priority of payment, manner, location, and form of payment, terms of redemption, at public or private sale, and at the time and price determined by the commission to be in the best interest of the program.

61-37-09. Pledges. Any pledge of revenue made by the commission as security for a program guarantee or program bonds is valid and binding from the time when the pledge is made. The revenues or other moneys so pledged and thereafter received by the program are immediately subject to the lien of the pledge, without any physical delivery or further act, and the lien of any pledge is valid and binding against all parties having claims of any kind against the program, regardless of whether the parties have notice. Neither the resolution nor any other instrument by which a pledge is created must be filed or recorded, except in the records of the program.

61-37-10. Reserve fund.

1. The program shall establish and maintain a reserve fund in which there must be deposited all moneys appropriated by the state for the purpose of the fund, all

proceeds of bonds required to be deposited by terms of any contract between the program and its bondholders or any resolution of the program with respect to the proceeds of bonds, any other moneys or funds of the program which are deposited by the program, any contractual right to the receipt of moneys by the program for the purpose of the fund, including a letter of credit or similar instrument, and any other moneys made available to the program only for the purposes of the fund from any other source. Moneys in the reserve fund must be held and applied solely to the payment of the interest on and the principal of bonds and sinking fund payments as they become due and payable and for the retirement of bonds, including payment of any redemption premium required to be paid when any bonds are redeemed or retired prior to maturity, and for the payment of principal and interest on municipal securities guaranteed by the program. Moneys in the reserve fund may not be withdrawn if the withdrawal would reduce the amount in the reserve fund to less than the required debt service reserve, except for payment of interest then due and payable on bonds and the principal of bonds then maturing and payable, sinking fund payments, the retirement of bonds in accordance with the terms of any contract between the program and its bondholders, the payment of principal and interest on municipal securities of an irrigation district for which a guarantee has been issued by the program, and for the payments on account of which interest or principal or sinking fund payments or retirement of bonds or execution of a guarantee, other moneys of the program are not then available in accordance with the terms of the contract. The reserve fund may not be used for the payment of a guarantee by the program unless the commission has determined that bonds of the program cannot be issued under acceptable terms for the payment of the guarantee, or the payment of the guarantee will not reduce the reserve fund to an amount less than the required debt service reserve. The required debt service reserve must be an aggregate amount equal to at least the largest amount of money required by the terms of all contracts between the program and its bondholders to be raised in the then current or any succeeding calendar year for the payment of interest on and maturing principal of outstanding bonds, and sinking fund payments required by the terms of any contracts to sinking funds established for the payment or redemption of the bonds.

2. If the establishment of the reserve fund for an issue or the maintenance of an existing reserve fund at a required level under this section would necessitate the investment of all or any portion of a new reserve fund or all or any portion of an existing reserve fund at a restricted yield, because not restricting the yield may cause the bonds to be taxable under the Internal Revenue Code, then, at the discretion of the program, no reserve fund need be established prior to the issuance of bonds, the reserve fund need not be funded to the levels required by this section, or an existing reserve fund may be reduced.
3. No bonds may be issued by the program unless there is in the reserve fund the required debt service reserve for all bonds then issued and outstanding and for the bonds to be issued. Nothing in this chapter prevents the program from satisfying this requirement by depositing upon issuance so much of the proceeds of the bonds to be issued, as is needed to achieve the required debt service reserve. The program may, at any time, issue its bonds or notes for the purpose of providing any amount necessary to increase the amount in the reserve fund to the required debt service reserve, or to meet higher or additional reserves as may be fixed by the program.
4. In order to ensure maintenance of the required debt service reserve, the legislative assembly shall appropriate and deposit in the reserve fund the amount certified by the commission as necessary to restore the reserve fund to an amount equal to the required debt service reserve, or maintain a reserve fund established by the commission under this chapter and required according to the terms of a guarantee issued by the program. However, the commission may approve a resolution for the issuance of bonds, as provided by this chapter, which states in substance that this

subsection is not applicable to the required debt service reserve for bonds issued under the resolution.

5. If the maturity of a series of bonds of the program is three years or less from the date of issuance of the bonds, the program may determine that no reserve fund need be established for that respective series of bonds, or that it may be established in an amount less than the required debt service reserve. If such a determination is made, holders of the respective series of bonds may have no interest in or claim on existing reserve funds established for the security of the holders of previously issued program bonds and may have no interest in or claim on reserve funds established for the holders of subsequent issues of bonds of the program.

61-37-11. Additional reserves and funds. The program may establish additional reserves, funds, or accounts as it deems necessary to further the program or to comply with any agreement made by, or any resolution of, the program.

61-37-12. Personal liability - Purchase of bonds - Bonds as legal investments - Security.

1. Neither a member of the commission nor any person executing bonds issued under this chapter is liable personally on any bonds by reason of the issuance of those bonds.
2. The program has the power to purchase bonds of the program out of any available funds or moneys of the program. The program may hold, cancel, or resell bonds or notes, subject to any agreements with holders of its bonds.
3. Notwithstanding any other law, the state and all public officers, boards, and agencies, and political subdivisions and agencies of the state, all national banking associations, state banks, trust companies, savings banks and institutions, savings and loan associations, investment companies, and other persons carrying on a banking business, and all executors, administrators, guardians, trustees, and other fiduciaries may legally invest any sinking funds, moneys, or other funds belonging to them or within their control in any bonds issued by the program pursuant to this chapter.
4. The bonds are authorized security for any and all public deposits.

61-37-13. Tax exemptions - Exemption of property from execution sale.

1. All property of the program and all bonds issued under this chapter are deemed to be serving essential public and governmental purposes and the property and the bonds issued, their transfer and their income, including any profits made on their sale, are exempt from all state, county, and municipal taxes.
2. All property of the program is exempt from levy and sale by virtue of an execution and no execution or other judicial process may issue against the property, nor may any judgment against the program be a charge or lien upon its property; provided, that nothing contained in this chapter applies to or limits the rights of the holder of any bonds to pursue any remedy for the enforcement of any pledge or lien given by the program on its revenues. Any action or proceeding in any court to set aside a resolution authorizing the issuance of bonds by the program under this chapter or to obtain any relief upon the ground that a resolution is invalid must be commenced within ten days after the adoption of that resolution by the commission. After the expiration of that period of limitation, no claim for relief or defense founded upon the invalidity of the resolution or any of its provisions may be asserted, nor may the validity of the resolution or any of its provisions be open to question in any court on any ground whatsoever.

61-37-14. Insurance or guaranty. The program is authorized and empowered to obtain from any department or agency of the United States or from nongovernmental insurer any insurance or guaranty, or from a financial institution a letter of credit to the extent the insurance, guaranty, or letter of credit available now or in the future for the payment or repayment of, interest or principal in whole or in part, on any bonds issued by the program, or on any municipal securities purchased or held by the program, or on any guarantee issued by the program, pursuant to this chapter; and to enter into any agreement or contract with respect to any insurance or guaranty, or letter of credit, and pay any required fee, unless doing so would impair or interfere with the ability of the program to fulfill the terms of any agreement made with the holders of its bonds or guarantees.

61-37-15. Remedies on default of municipal securities. In the event of a default by an irrigation district in the payment of interest on or principal of any municipal securities owned or held by the program, the program may proceed to enforce payment, pursuant to law, of the interest or principal or other amount then due and payable.

61-37-16. Form of municipal securities and investments. All municipal securities held by the program as permitted or provided for under this chapter must at all times be purchased and held in fully marketable form, subject to provision for any registration in the name of the program. All municipal securities at any time purchased, held, or owned by the program must, upon delivery to the program, be in fully marketable form and accompanied by the documentation required from time to time by the program.

61-37-17. Presumption of validity. After issuance, all bonds of the program are conclusively presumed to be fully authorized and issued under the laws of this state, and any person or governmental unit is estopped from questioning their authorization, sale, issuance, execution, or delivery by the program.

61-37-18. Protection of service during term of guarantee or loan.

1. The service provided or made available by an irrigation district through the construction or acquisition of an improvement, or the improvement revenues, financed in whole or in part with a guarantee or loan to the irrigation district from the program or any other state agency or enterprise, may not be curtailed or limited by inclusion of all or any part of the area served by the irrigation district within the boundaries of any other irrigation district, or by the granting of any private franchise for similar service within the area served by the irrigation district during the term of the guarantee or loan. The irrigation district providing the service may not be required to obtain or secure any franchise, license, or permit, as a condition of continuing to serve the area if it is included within the boundaries of another irrigation district during the term of the guarantee or loan.
2. Under the circumstances described in subsection 1, nothing prevents the two irrigation districts and the program or other state agency or enterprise from negotiating an agreement for the right or obligation to provide the service in question, provided that any agreement is invalid and unenforceable unless the program or other state agency or enterprise is a party to the agreement and unless the agreement contains adequate safeguards to ensure the security and timely payment of any outstanding bonds of the program issued to fund the loan.

CHAPTER 61-38*
DREDGED AND FILL MATERIAL DISPOSAL

<u>Section</u>	<u>Page</u>
61-38-01 Definitions	61-38: 1
61-38-02 Powers	61-38: 1
61-38-03 Permits - Certification from state department of health required	61-38: 1
61-38-04 Specification of disposal sites	61-38: 1
61-38-05 Discharge of dredged or fill material - Permit required – Exceptions	61-38: 2
61-38-06 General permits.....	61-38: 2
61-38-07 Emergency permits	61-38: 3
61-38-08 Permit application - Notice - Hearing.....	61-38: 3
61-38-09 Proceedings	61-38: 3
61-38-10 Penalties	61-38: 3
61-38-11 Restoration	61-38: 4

* **Effective Date of Chapter 61-38.** Section 3 of chapter 561, S.L. 2001, provides:

"SECTION 3. EFFECTIVE DATE. This Act [Chapter 61-38] becomes effective on the date the state engineer certifies to the governor that a program has been designed to effectively assume responsibility for the section 404 program of the Clean Water Act and the state water commission is ready to assume those responsibilities. The governor shall notify the secretary of state and the legislative council of the effective date of this Act."

CHAPTER 61-38

DREDGED AND FILL MATERIAL DISPOSAL

61-38-01. (Contingent effective date - See note) Definitions. The state engineer shall adopt definitions that are consistent with federal law for, among other words: "dredged material", "fill material", "general permit", "person", "waters of the state", and "wetlands".

61-38-02. (Contingent effective date - See note under section 61-38-01) Powers. The state engineer has the following powers:

1. To exercise general supervision of the administration and enforcement of this chapter and all rules and orders adopted pursuant to this chapter.
2. To advise, consult, and cooperate with other agencies of the state, the federal government, and other states and interstate agencies, and with affected groups, political subdivisions, and industries in furtherance of the purposes of this chapter.
3. To accept and administer loans and grants from the federal government and from other sources, public or private, for carrying out any of its functions, which loans and grants may not be expended for other than the purposes for which provided.
4. To enter upon or through permittee's premises where dredged or fill material is discharged, after written notice to the permittee. Such power may be exercised by authorized agents, representatives, and employees of the state engineer.
5. To exercise all incidental powers necessary to carry out the purposes of this chapter.
6. To make rules governing the application, issuance, denial, modification, or revocation of permits for the discharge of dredged or fill material into waters of the state and for the administration of this chapter.
7. To hold any hearings necessary for the administration of this chapter.
8. To initiate actions in court for the enforcement of this chapter including actions to enjoin any threatened or continuing violation of any requirement.
9. To issue administrative orders to restrain any person from engaging in any unauthorized activity.
10. To take all action necessary or appropriate to secure to the state the benefits of section 404 of the Clean Water Act [33 U.S.C. 1344].

61-38-03. (Contingent effective date - See note under section 61-38-01) Permits - Certification from state department of health required. The state engineer may not issue a permit under this chapter without a certification from the state department of health that the permitted activity will not adversely affect water quality.

61-38-04. (Contingent effective date - See note under section 61-38-01) Specification of disposal sites. The state engineer shall specify a disposal site for each permit issued. Each disposal site must be specified for each permit through application of rules adopted by the state engineer. The rules must be consistent with federal law. The state engineer may prohibit the specification of any defined area as a disposal site, withdraw any defined area from specification as a disposal site, or deny or restrict the use of any defined area for specification as a disposal site whenever the state engineer determines, after notice and opportunity for public hearing, that the discharge of dredged or fill materials will have an unacceptable adverse effect on municipal water supplies, shellfish beds and fishery areas, wildlife, or recreational areas.

61-38-05. (Contingent effective date - See note under section 61-38-01) Discharge of dredged or fill material - Permit required - Exceptions.

1. Except as otherwise provided by this chapter, no person may discharge dredged or fill material into waters of the state unless that person has a permit from the state engineer. No person may discharge dredged or fill material in violation of a permit. A permit is not required for:
 - a. The discharge of dredged or fill material when an activity is authorized by a general permit issued pursuant to section 61-38-06;
 - b. Normal farming, silviculture, and ranching activities such as plowing, seeding, cultivating, minor drainage, harvesting for the production of food, fiber, and forest products, or upland soil and water conservation practices;
 - c. Maintenance, including emergency reconstruction of recently damaged parts, of currently serviceable structures such as dikes, dams, levies, groins, riprap, breakwaters, causeways, bridge abutments or approaches, and transportation structures, which does not change the character, scope, or size of the original fill design;
 - d. Construction or maintenance of farm or stock ponds or irrigation ditches or the maintenance of drainage ditches;
 - e. Construction of temporary sedimentation basins on a construction site which does not include placement of fill material into waters of the state;
 - f. Construction or maintenance of farm roads or forest roads, or temporary roads for moving mining equipment, where such roads are constructed and maintained, in accordance with best management practices, to assure that flow and circulation patterns and chemical and biological characteristics of the waters of the state are not impaired, that the reach of the waters of the state is not reduced, and that any adverse effect on the aquatic environment will be otherwise minimized; or
 - g. The placement of fill material associated with activities which the state regulates by requiring best management practices under chapter 61-28.
2. Any discharge of dredged or fill material into waters of the state incidental to any of the activities identified in subdivisions a through g of subsection 1 must have a permit if it is part of an activity whose purpose is to convert an area of waters of the state into a use to which it was not previously subject, where the flow or circulation of waters of the state may be impaired or the reach of such waters reduced, or if the discharge contains a toxic pollutant. Where the proposed discharge will result in significant discernible alterations to flow or circulation, the presumption is that flow or circulation may be impaired by such alteration.

61-38-06. (Contingent effective date - See note under section 61-38-01) General permits.

1. In carrying out the functions relating to the discharge of dredged or fill material, the state engineer may, after notice and opportunity for public hearing, issue general permits on a state or regional basis for any category of activities involving discharges of dredged or fill material if the state engineer determines that the activities in the category are similar in nature, will cause only minimal adverse environmental effects when performed separately, and will have only minimal accumulative adverse effects on the environment. Any general permit issued under this section must set forth the requirements and standards which apply to any

activity authorized by the general permit. General permits must be issued pursuant to rules adopted by the state engineer which are consistent with federal law.

2. A general permit may be revoked or modified by the state engineer if, after opportunity for public hearing, the state engineer determines that the activities authorized by the general permit have an adverse impact on the environment or such activities are more appropriately authorized by individual permits.
3. The state engineer may require an individual permit for any proposed activity under a general permit where the nature or location of the activity makes an individual permit more appropriate.

61-38-07. (Contingent effective date - See note under section 61-38-01) Emergency permits. The state engineer may issue a temporary emergency permit for the discharge of dredged or fill material if unacceptable harm to life or severe loss of physical property is likely to occur before a permit could be issued or modified under procedures normally required.

61-38-08. (Contingent effective date - See note under section 61-38-01) Permit application - Notice - Hearing. Any person desiring to discharge dredged or fill material for which a permit is required shall file an application with the state engineer. The application must be on a form prescribed by the state engineer and must include information required by the state engineer. The state engineer may issue a permit after notice and opportunity for public hearing. Within fifteen days of receipt of all the information required to complete an application for a permit, the state engineer shall publish the notice.

61-38-09. (Contingent effective date - See note under section 61-38-01) Proceedings.

1. Any proceeding to determine compliance or violation of the provisions of this chapter or any rule, order, or condition in a permit issued pursuant to this chapter by the state engineer must be conducted in accordance with chapter 28-32.
2. Any person claiming to be aggrieved or adversely affected by actions taken or by any rule or order issued pursuant to this chapter may request a hearing by the state engineer if no hearing on the matter resulting in the action has been held. If a hearing has been held, the person claiming to be aggrieved or adversely affected may petition for reconsideration and may appeal in accordance with chapter 28-32.

61-38-10. (Contingent effective date - See note under section 61-38-01) Penalties. The state engineer may assess or sue to recover civil penalties and seek criminal remedies as provided in this section.

1. The state engineer may assess or recover civil penalties for discharges of dredged or fill material without a required permit or in violation of any permit condition of up to five thousand dollars per day of such violation.
2. The state engineer may seek criminal fines against any person who willfully or with criminal negligence discharges dredged or fill material without a required permit or violates any permit condition issued under this chapter of up to ten thousand dollars per day of such violation.
3. The state engineer may seek criminal fines against any person who knowingly makes a false statement, representation, or certification in any application, record, report, plan, or other document filed or required to be maintained under this chapter or any rules adopted pursuant to this chapter, or falsifies, tampers with, or knowingly renders inaccurate any monitoring device or method required to be maintained under the permit of up to five thousand dollars for each instance of violation.

61-38-11. (Contingent effective date - See note under section 61-38-01) Restoration.

In lieu of or in addition to the penalties authorized under section 61-38-10, the state engineer may require restoration of areas in which dredged or fill material has been illegally discharged. If the state engineer determines that any person has discharged dredged or fill material without a permit or in violation of any permit condition, the state engineer shall notify the person by registered or certified mail. The notice must specify the nature and extent of noncompliance and state that the area in which the dredged or fill material is located must be restored to the satisfaction of the state engineer within thirty days of receipt of the notice. If the area is not restored as required, the state engineer shall cause the restoration of the area and assess the cost of the restoration against the person or persons responsible for the illegal discharge.

CHAPTER 61-39 LAKE AGASSIZ WATER AUTHORITY

<u>Section</u>	<u>Page</u>
61-39-01 Findings and declaration of policy	61-39: 1
61-39-02 Lake Agassiz water authority created	61-39: 1
61-39-03 Lake Agassiz water authority - Board of directors	61-39: 1
61-39-04 Board of directors - Officers - Meetings	61-39: 2
61-39-05 Authority of the Lake Agassiz water authority	61-39: 2
61-39-06 Resolution authorizing the issuance of revenue bonds	61-39: 4
61-39-07 Provisions governing bonds	61-39: 5
61-39-08 Sale of bonds - When private sale authorized - Public sale and notice.....	61-39: 5
61-39-09 Notes issued pending preparation of bonds - Negotiability	61-39: 5
61-39-10 Validity of notes and bonds	61-39: 5
61-39-11 Notes and bonds exempt from taxation.....	61-39: 5
61-39-12 Covenants and provisions that may be inserted in resolution authorizing bonds.....	61-39: 5
61-39-13 Liability of authority for notes and bonds - Taxing power prohibited	61-39: 7
61-39-14 Duties of authority and officers relative to the issuance of bonds...	61-39: 7
61-39-15 Remedies of bondholders in general.....	61-39: 8
61-39-16 Project - Definition	61-39: 8

CHAPTER 61-39

LAKE AGASSIZ WATER AUTHORITY

61-39-01. Findings and declaration of policy. The legislative assembly declares that many areas and localities in eastern North Dakota do not enjoy adequate quantities of high-quality drinking water; that other areas and localities in eastern North Dakota do not have sufficient quantities of water to ensure a dependable, long-term supply; that greater economic security and the protection of health and property benefits the land and water resources of this state; and that the promotion of the prosperity and general welfare of all of the people of this state depend on the effective development and utilization of the land and water resources of this state and necessitates and requires the exercise of the sovereign powers of this state and concern a public purpose. To accomplish this public purpose, it is declared necessary that a water authority to store and distribute water to eastern North Dakota be established to provide for the supply and distribution of water to the people of eastern North Dakota for purposes, including domestic, rural water, municipal, livestock, light industrial, and other uses, with primary emphasis on domestic, rural water, and municipal uses; and provide for the future economic welfare and prosperity of the people of this state, and particularly the people of eastern North Dakota, by the bulk purchase of water from the Garrison Diversion Conservancy District delivered by the Red River valley water supply project for beneficial and public uses. The Garrison Diversion Conservancy District may acquire, construct, improve, and own the Red River valley water supply project and the Lake Agassiz water authority may enter one or more contracts to provide for the authority to acquire bulk water from the Garrison Diversion Conservancy District and may enter water supply contracts with member cities and water districts for the resale of this water for consumption within or outside the state.

The legislative assembly acknowledges that North Dakota and Minnesota communities jointly use the Red River as a water resource. It is in the best interest of eastern North Dakota also to study and possibly provide for the water needs of those Minnesota communities through a Red River valley water supply project, particularly if that project maintains the use of the Red River for North Dakota communities.

In furtherance of this public purpose, the state water commission may provide for the issuance of bonds in accordance with chapter 61-02 to finance the costs of any project to deliver water to eastern North Dakota. This chapter does not abrogate or limit the rights, powers, duties, and functions of the state water commission or state engineer, but is supplementary to those rights, powers, duties, and functions.

61-39-02. Lake Agassiz water authority created. The Lake Agassiz water authority consists of cities and water districts located in that part of the state which is included within the boundaries of Cavalier, Pembina, Walsh, Nelson, Grand Forks, Griggs, Steele, Traill, Barnes, Cass, Ransom, Sargent, and Richland Counties and that pay dues to the authority. Minnesota cities may join the authority, provided a portion of the city is located within five miles [8.05 kilometers] of this state, or if the city uses the Red River for its primary water supply. The authority is a governmental agency, body politic and corporate with the authority to exercise the power specified in this chapter, or which may be reasonably implied. Cities and water districts may pay dues to the authority as determined by the authority.

61-39-03. Lake Agassiz water authority - Board of directors. The authority must be governed by a board of directors selected as follows:

1. One member from a city with a population greater than forty thousand located east of state highway 1 and north of state highway 200.
2. One member from a city with a population greater than forty thousand located east of state highway 1 and south of state highway 200.
3. One member from a city with a population of five thousand but not more than forty thousand located east of state highway 1.

4. One member from a city with a population of less than five thousand located east of state highway 1.
5. Two members from water districts located east of state highway 1 and north of state highway 200.
6. Two members from water districts located east of state highway 1 and south of state highway 200.
7. One member from water districts located east of state highway 1.
8. One member from a Minnesota city with a population of more than thirty thousand and which is located within five miles [8.05 kilometers] of this state.

North Dakota city members must be selected for two-year terms by election by cities located east of state highway 1 during the annual meeting of the North Dakota league of cities in every odd-numbered year beginning in 2003. Water district members must be selected for two-year terms by election by water districts located east of state highway 1 during the annual meeting of the North Dakota rural water systems association in every even-numbered year beginning in 2004. The initial selection of members must be at a meeting held by the board of directors of the North Dakota league of cities and by the board of directors of the North Dakota rural water systems association. The initial city members shall serve until the annual meeting of the North Dakota league of cities in 2003 and the initial water district members shall serve until the annual meeting of the North Dakota rural water systems association in 2004. The initial Minnesota city is Moorhead, as it is an associate member of the authority. Moorhead will serve in this capacity until the league of Minnesota cities annual conference in 2006. During even-numbered years thereafter, Minnesota cities within five miles [8.05 kilometers] of the Red River or that use the Red River as a primary water supply may elect their representative. A member may designate an alternate to attend meetings and to act on the member's behalf. The board of directors may designate associate members who are nonvoting members of the board. Notwithstanding the provisions of this section, within two years of the first delivery of water by the Red River valley water supply project, board members must be from a city or water district that has entered a water service contract with the Lake Agassiz water authority.

61-39-04. Board of directors - Officers - Meetings. The board of directors may adopt such rules and bylaws for the conduct of the business affairs of the authority as it determines necessary, including the time and place of regular meetings of the board and a dues structure for membership in the authority. The board shall elect from its members a chairman and a vice chairman. The board shall also elect a secretary and a treasurer, which offices may be held by the same individual, and either or both offices may be held by an individual who is not a member of the board. Special meetings of the board may be called by the secretary on order of the chairman or upon written request of a majority of the qualified members of the board. Notice of a special meeting must be mailed to each member of the board at least six days before the meeting, provided that a special meeting may be held at any time when all members of the board are present or consent in writing. The Garrison Diversion Conservancy District shall provide administrative, technical, and legal support for the authority.

61-39-05. Authority of the Lake Agassiz water authority. The board of directors of the Lake Agassiz water authority may:

1. Sue and be sued in the name of the authority.
2. Exercise the power of eminent domain in the manner provided by title 32 for the purpose of acquiring and securing any rights, titles, interests, estates, or easements necessary or proper to carry out the duties imposed by this chapter, and particularly to acquire the necessary rights in land for the construction of pipelines, reservoirs, connections, valves, pumping installations, or other facilities for the storage, transportation, or utilization of water and all other appurtenant facilities used in connection with the authority, or any part thereof.

3. Accept funds, property, and services or other assistance, financial or otherwise, from federal, state, and other public or private sources for the purpose of aiding and promoting the construction, maintenance, and operation of the authority.
4. Cooperate and contract with the agencies or political subdivisions of the state of North Dakota or other states, in research and investigation or other activities promoting the establishment, construction, development, or operation of the authority.
5. Appoint and fix the compensation and reimbursement of expenses of such employees as the board deems necessary to conduct the business and affairs of the authority and to procure the services of engineers and other technical experts, and to retain attorneys to assist, advise, and act for the authority in its proceedings.
6. Operate and manage the authority to distribute water to its members and others within or outside the territorial boundaries of this state.
7. Sell or exchange any and all real property purchased or acquired by the authority. All money received from any such sale or exchange must be deposited to the credit of the authority and may be used to pay expenses of the authority.
8. Enter a contract or contracts to provide for a supply of bulk water from the Garrison Diversion Conservancy District which contract or contracts may provide for payments to fund some or all of the Garrison Diversion Conservancy District's costs of acquiring, constructing, or reconstructing one or more Red River valley water supply projects, which Red River valley water supply projects the Garrison Diversion Conservancy District may acquire, construct, improve, and own, as well as the Garrison Diversion Conservancy District's costs of operating and maintaining one or more Red River valley water supply projects, whether the acquisition, construction, or reconstruction of any Red River valley water supply project actually is completed and whether water actually is delivered pursuant to the contract or contracts, and which contract or contracts the Garrison Diversion Conservancy District may execute without limitation on term of years.
9. Enter a contract or contracts to provide for a bulk sale, lease, or other supply of water for beneficial use to persons within or outside the authority, which contract or contracts may provide for payments to fund some or all of the Garrison Diversion Conservancy District's costs of acquiring, constructing, or reconstructing one or more Red River valley water supply projects, as well as the Garrison Diversion Conservancy District's costs of operating and maintaining one or more Red River valley water supply projects, whether the acquisition, construction, or reconstruction of any Red River valley water supply project actually is completed and whether water actually is delivered pursuant to the contract or contracts, which contract or contracts cities and water districts that are members of the Lake Agassiz water authority are authorized to execute without limitation on term of years.
10. Borrow money as provided in this chapter.
11. Issue and sell revenue bonds for its own benefit or for the benefit of the Garrison Diversion Conservancy District, in an amount or amounts determined by the board, including an amount or amounts for costs of issuance and financing, and any necessary reserve funds, for the purpose of financing the cost of a project, purchasing bulk water, or otherwise making capital payments required under a water purchase contract.
12. Lend some or all proceeds of its revenue bonds to the Garrison Diversion Conservancy District, to the state of North Dakota, or to a political subdivision or public body within the state, to facilitate the Garrison Diversion Conservancy District's acquisition, construction, reconstruction, or improvement of one or more

Red River valley water supply projects, or any feasibility study or preliminary economic, engineering, or legal work relating to any Red River valley water supply project.

13. Refund and refinance its bonds from time to time as often as it is advantageous and in the interest of the authority.
14. Pledge any and all income, profits, and revenues received by the authority in connection with the operation, lease, sale, or other disposition of all or any part of a project to secure the payment of bonds issued and sold to finance the project or otherwise.
15. Prescribe, revise, and collect rates, fees, tolls, or charges for the services, facilities, or commodities furnished by the authority, and in anticipation of the collection of the revenues of the authority, issue revenue bonds to finance all or part of the costs of the acquisition, construction, reconstruction, improvement, betterment, or extension of a project.
16. Pledge revenues of the authority to the punctual payment of principal and interest on bonds or water purchase contract obligations. A pledge under this subsection applies to the revenues of improvements, betterments, or extensions of the authority which may be constructed or acquired after the issuance of bonds, the revenues of existing systems, plants, works, instrumentalities, and properties of any part of the authority improved, bettered, or extended, and the revenues received from payments made under water sale contracts between the authority and persons that contract to purchase water from the authority.
17. Make all contracts, execute all instruments, and do all things necessary or convenient in the exercise of its powers or in the performance of its covenants or duties or in order to secure the payment of its bonds, but an encumbrance, mortgage, or other pledge of property of the authority may not be created by any such contract or instrument.
18. Accept from any authorized federal agency loans or grants for the planning, construction, acquisition, lease, or other provision of a project, and to enter into agreements with the agency respecting the loan or grants.
19. Contract debts and borrow money, pledge property of the authority for repayment of indebtedness other than bonded indebtedness, and provide for payment of debts and expenses of the authority.
20. Operate and manage the authority to distribute water to western Minnesota cities that are members of the authority.

Property of the authority may not be liable to be forfeited or taken in payment of any bonds issued under this chapter, and debt on the general credit of the authority may not be incurred in any manner for payment of bonds under this chapter.

61-39-06. Resolution authorizing the issuance of revenue bonds. The issuance of revenue bonds or refunding bonds must be authorized by a resolution of the board adopted after appropriate notice by the affirmative vote of a majority of the board. Unless otherwise provided in the resolution, the resolution under this section takes effect immediately and need not be laid over, published, or posted.

Each resolution providing for the issuance of bonds provided for in this chapter must set forth the purpose or purposes for which the bonds are to be issued, the provisions for payment of the bonds, and the revenues or other funds pledged to secure the payment of the bonds.

61-39-07. Provisions governing bonds. The resolution authorizing the issuance of revenue bonds or refunding bonds under this chapter or resolutions adopted after the adoption of the original resolution must prescribe:

1. The rate or rates of interest, or if an interest rate is variable, the method for calculating the interest rate.
2. Whether the bonds will be in one or more series.
3. The date or dates the bonds will bear.
4. The time or times the bonds will mature.
5. The medium in which the bonds will be payable.
6. The place or places where the bonds will be payable.
7. The terms of redemption, if any, to which the bonds will be subject.
8. The manner in which the bonds will be executed.
9. The terms, covenants, and conditions that the bonds will contain.
10. The form in which the bonds will be issued, either coupon or registered.

61-39-08. Sale of bonds - When private sale authorized - Public sale and notice. Revenue bonds or refunding bonds may be sold at public or private sale on such terms as the board deems appropriate.

61-39-09. Notes issued pending preparation of bonds - Negotiability. Pending the issuance of bonds, bond anticipation notes may be issued and sold in the form and with the provisions determined by the board.

61-39-10. Validity of notes and bonds. Bond anticipation notes, revenue bonds, or refunding bonds bearing the manual or facsimile signatures of the appropriate officers who are in office on the date of signing are valid and binding obligations notwithstanding that before the delivery and payment any or all of the persons whose signatures appear on the notes or bonds have ceased to be officers of the issuing authority. The resolution authorizing the notes or bonds may provide that the notes or bonds must contain a recital that they are issued under this chapter and the recital is conclusive evidence of their validity and of the regularity of their issuance.

61-39-11. Notes and bonds exempt from taxation. Notwithstanding any restriction contained in any other law, the state and all public officers, boards, and agencies, and political subdivisions and agencies thereof, all national banking associations, state banks, trust companies, savings banks and institutions, savings and loan associations, investment companies, and other persons carrying on a banking business, and executors, administrators, guardians, trustees, and other fiduciaries, may legally invest any sinking funds, moneys, or other funds belonging to them or within their control in any bonds issued by the authority pursuant to this chapter, and the bonds are authorized security for public deposits. Notes and bonds, including refunding bonds, issued under this chapter and their income are exempt from all taxation by the state or by any political subdivision except inheritance, estate, and transfer taxes.

61-39-12. Covenants and provisions that may be inserted in resolution authorizing bonds. Any resolution authorizing the issuance of bonds under this chapter may contain covenants and provisions concerning:

1. The rates, fees, tolls, or charges to be charged for the services, facilities, and commodities of a project.

2. The use and disposition of all or a portion of the authority's income, profits, and revenues.
3. The creation, maintenance, regulation, use, and disposition of reserves or sinking funds.
4. The purpose to which the proceeds of the sale of bonds may be applied and the use and disposition of the proceeds.
5. The events of default and the rights and liabilities arising upon default and the terms and conditions upon which the holders of bonds issued under this chapter may bring civil action on the bonds.
6. The creation, priority, and enforcement of liens against the authority's income, profits, or revenues.
7. The issuance of other or additional bonds or instruments payable from or constituting a charge against the authority's income, profits, or revenues.
8. The creation and use of synthetic interest rate contracts, interest rate caps, floors, and collars, and other techniques to lower the authority's borrowing rate or reduce its exposure to interest rate risk, or both.
9. The keeping, inspection, and audit of books of account.
10. The terms and conditions upon which any or all of the bonds become or may be declared due before maturity and the terms and conditions upon which the declaration and its consequences may be waived.
11. The rights, liabilities, powers, and duties arising upon the breach by the authority of any covenants, conditions, or obligations.
12. The vesting in a trustee of the right to enforce any covenants made to secure, to pay, or in relation to the bonds, the powers and duties of such trustee, and the limitations of liabilities thereof.
13. The terms and conditions upon which the holders of the bonds, or the holders of any proportion or percentage of them, may enforce any covenants made or any duties imposed under this chapter.
14. A procedure by which the terms of any resolution authorizing bonds or of any other contract with bondholders, including an indenture of trust or similar instrument, may be amended or abrogated, and the amount of bonds that holders of which must consent to the resolution or contract, and the manner in which such consent may be given.
15. The subordination of the security of any bonds issued under this chapter and the payment of principal and interest on those bonds, to the extent deemed feasible and desirable by the governing body, to other bonds or obligations of the authority issued to finance or refinance a project or that may be outstanding when the bonds thus subordinated are issued and delivered.
16. Provisions with respect to the authority entering an agreement with a private bond insurer, bank, or other liquidity or credit enhancer for bond insurance, a guarantee, a letter of credit, or any other credit or liquidity enhancement that the authority may find to be advantageous or necessary to insure, guaranty, or enhance the payment of the principal of or interest on or liquidity for some or all of the bonds. The cost of any such enhancement or liquidity may be paid from bond proceeds or from other funds of the authority available for this purpose.

This section does not authorize the authority to do anything in any manner or for any purpose which would result in the creation or incurring of a debt or indebtedness of the state or the issuance of any instrument which would constitute a debt or indebtedness of the state within the meaning of any provision, limitation, or restriction of the Constitution of North Dakota relating to the creation or incurring of a debt or indebtedness of the state or the issuance of an instrument constituting a debt or indebtedness of the state.

61-39-13. Liability of authority for notes and bonds - Taxing power prohibited.

Bond anticipation notes, revenue bonds, and refunding bonds issued under this chapter may not be payable from or charged upon any funds other than the revenue pledged to their payment and the authority's notes and bonds may not be subject to any pecuniary liability. The holder of any such notes or bonds may not enforce payment of the notes or bonds against any property of the authority. Notes and bonds issued under this chapter do not constitute a charge, lien, or encumbrance upon any property of the authority, other than the revenues pledged to their payments. Each note and each bond issued under this chapter must recite in substance that the note or bond and interest on the note or bond is payable solely from the revenue pledged to the payment and that the note or bond does not constitute a debt of the state within the meaning of any constitutional or statutory limitation.

61-39-14. Duties of authority and officers relative to the issuance of bonds. To adequately secure the payment of bonds and interest on the bonds, the authority and its officers, agents, and employees shall:

1. Pay or cause to be paid punctually the principal and interest of every bond on the dates, at the places, in the manner, and out of the funds provided in the refunding bond and in accordance with the resolution authorizing its issuance.
2. Make certain any project financed by the authority is operated in an efficient and economical manner, enforce all water purchase and water sales contracts, and establish, levy, maintain, and collect related necessary or proper fees, tolls, rentals, rates, and other charges. Such fees, tolls, rentals, rates, and other charges must be sufficient, after making due and reasonable allowances for contingencies and for a margin of error in the estimates, at least:
 - a. To pay all current expenses of operation and maintenance of any project;
 - b. To make all payments required under any water purchase contract the authority may execute;
 - c. To pay the interest and principal on the authority's notes and bonds as they become due;
 - d. To comply with the terms of the resolution authorizing the issuance of the bonds or any other contract or agreement with the holders of the refunding bonds; and
 - e. To meet any other obligations of the authority that are charges, liens, or encumbrances upon the revenues of the authority.
3. Operate, maintain, preserve, and keep every part of any tangible project financed and owned or operated by the authority in good repair, working order, and condition.
4. Enforce the provisions of all water purchase and sale contracts that produce revenues pledged to payment of bonds.
5. Preserve and protect the security of the bonds and the rights of the bondholders and warrant and defend such rights against all claims and demands.

6. Pay and discharge all lawful claims for labor, materials, and supplies which, if unpaid, might become by law a lien or charge upon the revenues, or any part of the revenues, superior to the lien of the bonds or which might impair the security of the bonds.
7. Hold in trust the revenues pledged to the payment of the bonds for the benefit of the holders of the bonds and apply the revenues only as provided by the resolution authorizing the issuance of the bonds or, if the resolution is modified, as provided in the modified resolution.
8. Keep proper separate books of record and accounts of the project in which complete and correct entries must be made of all transactions relating to any part of the project. All books and papers of the authority are subject to inspection by the holders of ten percent or more of the outstanding bonds or of their representatives authorized in writing.

The duties contained in this section may not require any expenditure by the authority of any funds other than revenue received from a project or water sale contract. The performance of the duties enumerated in this section is of the essence of the contract of the authority with the bondholders.

61-39-15. Remedies of bondholders in general. Subject to any contractual limitations binding upon the holders of any issue of bonds, or a trustee for the holders, including the restriction of the exercise of any remedy to a specified proportion or percentage of the holders, any holder of bonds or trustee, for the equal benefit and protection of all bondholders similarly situated, may:

1. By mandamus or other civil action, enforce the holder's rights against the authority and its board and any of its officers, agents, or employees and may require the authority or the board or any officers, agents, or employees of the authority or board to perform their duties and obligations under this chapter and their covenants and agreements with bondholders.
2. By civil action, require the authority and the board to account as if they were the trustees of an express trust.
3. By civil action, enjoin any acts or things that may be unlawful or in violation of the rights of the bondholders.
4. Bring suit upon the bond.

A right or remedy conferred by this chapter upon any bondholder, or upon any trustee for a bondholder, is not intended to be exclusive of any other right or remedy, but each such right or remedy is cumulative and in addition to every other right or remedy and may be exercised without exhausting and without regard to any other remedy conferred by this chapter or by any other law of this state.

61-39-16. Project - Definition. As used in this chapter, unless the context otherwise requires, the term project means either a system, plant, works, instrumentality, or property used to provide water supply in connection with the Red River valley water supply project, or a contract for the purchase of water, including a contract for the bulk purchase of water from the Garrison Diversion Conservancy District delivered by means of a Red River valley water supply project.